92-1830

NO.

Supreme Court, U.S.
FILED
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1992

ROBERT D. SPICKLER,
Petitioner

v.

KEY BANK OF SOUTHERN MAINE, and
RICHARD LUCAS,
Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT
OF THE STATE OF MAINE

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

QUESTION I

WHERE ROBERT SPICKLER WAS BARRED FROM JOINING HIS WIFE, OLIVE SPICKLER, IN HER COMPLAINT THAT THE BANK MISHANDLED THE SALE OF THEIR SECOND HOME, AND WHERE, SUBSEQUENTLY, THE COURT FOUND AGAINST HER, WAS IT VIOLATIVE OF ROBERT'S DUE PROCESS RIGHTS TO ORDER HIM TO PAY FOR THE BANK'S COSTS IN THE DEFENSE OF OLIVE'S CLAIM?

QUESTION II

WHERE THE DEFENDANT BANK TESTIFIED THAT IT TOOK MONEY THAT IT HELD IN TRUST FOR A DEPOSITOR AND APPLIED IT TO A THIRD PARTY'S UNPAID LOANS UNDER THE RUBRIC THAT THE TRUST DEPOSITOR WAS A GUARANTOR OF THE THIRD PARTY'S LOANS, WAS ROBERT SPICKLER, TRUST DEPOSITOR, IN FACT, DENIED HIS RIGHTS UNDER 18 U.S.C. Sec. 1962(a) WHEN THE TRIAL COURT DENIED HIS MOTION TO AMEND THE COMPLAINT TO INCLUDE THE RICO CLAIM?

QUESTION III

WHERE R. D. REALTY CORPORATION WAS THE PRINCIPAL PERSON IN THE TRANSACTION AND WHERE ALL OF ITS CLAIMS AGAINST THE BANK WERE ASSIGNED TO ROBERT SPICKLER, WHO ASSERTED THOSE RIGHTS, WAS IT A DENIAL OF ROBERT'S DUE PROCESS RIGHTS WHEN THE COURT RULED THAT THOSE CLAIMS COULD ONLY BE BROUGHT BY R. D. REALTY (A DISSOLVED CORPORATION) AND ONLY THROUGH A LICENSED ATTORNEY?

QUESTION IV

WHERE THERE WAS NO EVIDENCE THAT ROBERT SPICKLER EVER FILED A BASELESS LAWSUIT, AND WHERE THE BANK'S COUNSEL, ALTHOUGH REQUESTED ON SEVERAL OCCASIONS TO IDENTIFY ANY BASELESS LAWSUIT BROUGHT BY SPICKLER, THEY COULD NOT DO SO; WAS IT UNEQUAL TREATMENT UNDER THE LAW FOR THE COURT TO ORDER A PERMANENT INJUNCTION UPON SPICKLER FORBIDDING HIM FROM FILING ANY LAWSUIT AGAINST THE BANK AND ITS REPRESENTATIVES WITHOUT FIRST OBTAINING THE PERMISSION OF A STATE JUDGE?

QUESTION V

WHERE PETITIONER ROBERT SPICKLER, THROUGH A TWO WEEK JURY TRIAL WAS SUBJECTED TO A MULTIPLICITY OF UNEQUAL TREATMENT AND WRONGFUL DECISIONS BY THE TRIAL COURT, AND WHERE THOSE CLAIMS OF MISTREATMENT WERE OBJECTED TO AND PROVEN IN THE RECORD AND BROUGHT TO THE ATTENTION OF THE MAINE SUPREME JUDICIAL COURT ON APPEAL, WHICH APPEAL COURT, WITHOUT BASIS OR FURTHER COMMENT, DECLARED THE CLAIMS WITHOUT MERIT; WERE THE MAINE COURTS IN VIOLATION OF 42 U.S.C. Sec. 1983 BY UNLAWFULLY DISPOSING OF PETITIONER'S CIVIL RIGHTS UNDER THE COLOR OF STATE LAW?

All parties appear in the caption.
The Judgments obtained by both defendants are sought to be reviewed.

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The applicable Decisions of the Trial Court which were appealed to the Maine Supreme Judicial Court are reproduced in the Appendix at Pages A-10, A-11, and A-14.

GROUNDS ON WHICH JURISDICTION IS INVOKED:

ORIGINAL DATE OF ENTRY OF JUDGMENT: December 18, 1992

DATE OF ORDER ON RECONSIDERATION: January 25, 1993

STATUTORY PROVISION CONFERRING JURISDICTION ON THIS COURT:

28 U.S.C. Sec. 1254(1)

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THIS CASE:

FOURTEENTH AMENDMENT:

". . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTES:

18 U.S.C. Sec. 1962. Prohibited Activities.

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquistition of any interest in, or the establishment or operation of any enterprise which is engaged in, or the activities of which effect, interstate or foreign commerce.

STATUTES (CONTINUED):

42 U.S.C. Sec. 1983

Protects the people of a certain class from deprivation of the civil rights by any state of the United States

"Under color of state law"

CIVIL REMEDIES

18 U.S.C. Section 1964(c) provides:

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefore in any appropriate United States district court and shall recover three fold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

STATEMENT OF THE CASE

Petitioner Robert D. Spickler and his wife, Olive Spickler, brought an action in the Maine Superior Court against Key Bank of Southern Maine and its vice president claiming that the bank had mishandled the sale of their assets, selling them to a private individual instead of at a public auction, as promised, thus receiving much less than the assets were worth.

In addition, the complaint alleged that the bank unlawfully paid to itself funds it held in trust for Chambers Point, Inc., a corporation wholly owned by Robert Spickler.

A two week jury trial was held. During the trial, Defendant Richard Lucas, vice president for Key Bank, testified that he did not specifically promise that the assets would be sold only by public auction and that the bank was justified in taking the trust money it held for Chambers Point because the bank felt that Chambers Point was a guarantor for loans made to R. D. Realty Corporation which was also owned by Robert Spickler.

RELEVANT BACKGROUND

Petitioner Robert Spickler was a real estate developer and a real estate broker who, for over thirty years developed real estate both residential

and commercial in a region from New York to Maine. Generally, each development was administered through a separate corporation of which he and, or his family were the sole shareholders.

In 1968 Spickler, together with his wife and school age children moved to Maine from Connecticut where he continued his business of real estate development and brokerage.

In 1976 he purchased all of the stock of R. D. Realty Corporation which was originally owned by another developer, Roger Dube, and proceeded to develop its only asset, some three hundred acres of waterfront on the coast of Maine known as Parker Head Neck.[1] R. D. Realty borrowed from Key Bank to pay for the development costs. These loans were guaranteed by Robert Spickler, his wife, Olive, and Chambers Point, Inc., one of Spickler's corporations.

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[1]Spickler had previously had partial ownership of the stock of R. D. Realty Corporation through a joint venture with one Dr. Pettengill in 1973 and in 1976 he bought Pettengill's interest.
In 1973, at the Pettengill, Spickler, Dube, closing, Dube was given purchase money mortgages by R. D. Realty. As a condition of the mortgages, Dube agreed that no payments would begin on the mortgages until Dube had made the title to the Parker Head real estate marketable. Unknown to Spickler until 1977, Spickler's attorney at closing failed to memorialize the conditional understanding concerning when mortgage payments were to become due and Dube, denying that such an agreement was made, instituted foreclosure on Parker Neck before he made the title marketable, and after R. D. Realty had improved the property and made it otherwise ready for marketing.

By 1977, R. D. Realty had made the Parker Head Neck Development ready for marketing but Dube, claiming his mortgages were in default. refused to release mortgage liens so R. D. Realty was stymied in its effort to make good on loans made by Key Bank. In addition, R. D. Realty was forced to defend several lawsuits brought against it from claims originating under Dube's ownership.

Over time, R. D. Realty and Robert Spickler had exhausted their liquid assets in the development of Parker Head Neck and in support of lawsuits to the extent where they could no longer pay for attorneys to represent them. It became necessary for Robert Spickler to proceed pro se in several of those lawsuits.[2]

By 1983, in that there was no documentation of the condition as to when the Dube mortgages were to be paid, Dube was permitted to foreclose on his mortgages and Key Bank, rightfully, looked to R. D. Realty's guarantors, Robert D. Spickler, Olive S. Spickler and Chambers Point, Inc., for payment.

By a letter written to the Spicklers by the bank and accepted by the Spicklers, an agreement was reached to settle the obligations of R. D. Realty

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[2]During the course of this lawsuit, both R. D. Realty Corporation and Chambers Point, Inc. assigned their rights to Robert Spickler, individually, after which, they were dissolved.

Corporation and the guarantors, Chambers Point, Inc. and Robert D. Spickler and Olive S. Spickler. The Agreement provided that:

1. The Spicklers would deed their primary residence in Scarborough, Maine to the bank.

2. The Spicklers would deed to the bank their second home in construction on Lot #26 in Parker Head Neck.

3. Chambers Point, Inc. would deed to the bank its subdivision in Roque Bluffs, Maine.

4. The Spicklers and R. D. Realty would assign to the bank insurance benefits that they were to receive as a result of a recent fire on Lot #26.

5. R. D. Realty would deed all of its real estate in the Parker Head Subdivision to the bank.

6. Robert Spickler would assign to the bank a certain judgment that he had against Roger Dube.

In return for the assignment of those assets, the bank released the guarantors from their liabilities for R. D. Realty's obligations to the bank.

The bank reduced and limited the amount of R. D. Realty's obligations to $235,000.00 and promised that if the sale of the six assets exceeded that amount all of the excess would be returned to the Spicklers.

During the negotiations leading up to the acceptance of the agreement by the Spicklers and the corporations, the bank promised that the assets would be sold only by a public auction and that Robert D. Spickler would be informed of the date of the sale so that he could attend the sale together

with interested buyers that he had standing by.

In 1978, Chambers Point, Inc. had sold some lots in its subdivision in Roque Bluffs, Maine and opened a trust account with itself as beneficiary, the bank being the same institution as the defendant in the present case. This trust account consisted of certain escrow funds which Chambers Point would release to itself after it had installed roads and power lines for the benefit of its customers.

(This Court should note that Chambers Point did not assign its escrow account asset to the bank in the May 20th 1983 agreement.)

After turning over their assets, Robert Spickler and, at times, Olive Spickler inquired of Mr. Lucas, Vice President of Key Bank (the person with whom they dealt) as to when the auction would take place. Robert Spickler reminded Lucas that he had interested buyers standing by to take part in the auction. Lucas was evasive with his answers and did not hold the promised auction but, instead, sold the assets privately and then did not admit this to the Spicklers until after the bank had consummated the sale. Later, upon Spickler's inquiry, he also learned that the bank had closed out the Chambers Point Trust Account a year earlier, after which, Robert D. Spickler and Olive S. Spickler brought this suit pro se on or about March 5, 1985.

Count I was brought pro se as a derivative shareholders' suit by the Spicklers on behalf of

Chambers Point, Inc. for the unlawful taking of the escrow funds deposited in a special account. On February 8, 1988, the Superior Court dismissed Count I, ruling that the corporate claim could not be brought pro se. [Perkins, J.]

On, or about the 14th of December 1988, Robert Spickler was assigned all of its rights and interest in the escrow funds by Chambers Point, Inc. and, on or about 12 March 1989, Robert Spickler moved to file an amended Complaint to include the escrow account claim which the Court had dismissed in February 1988.

Robert Spickler had also been assigned the rights of R. D. Realty Corporation on July 2, 1988 and, in like manner, he moved to include those rights in the same amended complaint but the Court denied the amendment, stating that Spickler had failed to present anything "new" that would warrant the entry of the amended claims. [Brodrick, J .]

In October 1990, a trial management conference was held before Judge Cole. At the trial conference, Judge Cole heard and granted Robert Spickler's Motion to File a Supplemental Complaint, which included the escrow account claims, originally those of Chambers Point, Inc. which had been

assigned to him.[3]

After Judge Cole withdrew from the case, Robert Spickler continued his attempts to convince Judge Brennan that he had personal rights assigned to him by R. D. Realty Corporation in Lot #26 under the same theory as was found by Judge Cole with reference to the Chambers Point assignment of the escrow account claim. However, Judge Brennan disagreed with the Cole decision by ruling that the R. D. Realty claim, irrespective of the assignment to Spickler, could only proceed if R. D. Realty (already dissolved) was represented by counsel. [APP. - Pg. A-14] (See, for example, Spickler's letter of September 9, 1991 to Judge Brennan in lieu of Motion in limine.) [APP. - Pg. A-30]

Judge Brennan made it clear that Robert Spickler, individually, had no standing to sue the bank on any claims for the mishandling of the sale of Lot #26 and, in fact, ordered him not to refer during his case-in-chief to anything pertaining to Lot #26. The Court made it clear that the claim for Lot #26 was Olive Spickler's, alone.

Robert Spickler's case was ordered restricted to two claims: that the bank had unlawfully seized

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[3]Robert Spickler also asked Judge Cole to permit him to further amend the complaint to include claims he had been assigned from R. D. Realty Corporation. (Spickler's DESIGNATION OF TRIAL ISSUES) [APP. - Pg. A-17] However, Judge Cole recused before he could rule on this issue, and was replaced by Judge Brennan who remained with the case from then on through the trial in September 1991.

his escrow account and that the bank had disposed of his Dube Judgment without receiving payment for it.

During the trial, on direct examination, Mr. Lucas testified that the bank was justified in taking the escrow funds because the funds were held for Chambers Point, Inc. who had guaranteed the loans made to R. D. Realty Corporation.

On the basis of this testimony, Robert Spickler moved to amend the complaint to include a claim under 18 U.S.C. Sec. 1962(a). [APP. - Pg.A-34]

The Court, without stating any reason, disallowed the Motion to Amend to include the RICO claim.

During the trial the counsel for the bank moved for a permanent injunction against Robert Spickler (and his wife) which would order them not to sue the bank or its counsel on any alleged basis that could be related to the Parker Head Neck/R. D. Realty transaction. In support of this motion, the defendants' counsel asked the Court to take judicial notice that Robert Spickler and his corporations were involved in over twenty lawsuits covering the previous twenty years. The Court did not act on that motion during the trial.

After the two week trial, the Jury found, as follows:

1. For Robert Spickler on the Escrow Account.
2. For the Bank on the Dube Judgment.
3. For the Bank on Olive Spickler's claim on Lot #26.

The Court, as a result of the Jury Verdicts, issued three Orders of Judgment:

1. The Judgment for the Bank on Lot #26 applied against Robert D. Spickler, as well as Olive S. Spickler.

2. The Judgment obtained by Robert D. Spickler on the Escrow Account was also obtained by Olive S. Spickler (notwithstanding that she had no rights, or had ever made any claim on the escrow account).

3. The Judgment for the bank on the Dube Judgment was also against Olive Spickler (notwithstanding that she had no rights, or had ever made any claim on the Dube Judgment. **[APP. - Pg.A-10]**

At a post trial hearing, held two months after the trial, Judge Brennan issued the permanent injunction sought by the defendants and their counsel. **[APP. - Pg.A-11]**

At the same hearing, Judge Brennan also granted the defendants their costs in defending against Olive's claim on Lot #26 and ordered Robert Spickler, who had been adjudged as having no part in the claim, to pay those costs.

SPECIFIC FACTS OF RECORD PERTINENT TO THE FIVE QUESTIONS PRESENTED IN THIS PETITION.

FACTS MATERIAL TO QUESTION I

WHERE ROBERT SPICKLER WAS BARRED FROM JOINING HIS WIFE, OLIVE SPICKLER, IN HER COMPLAINT THAT THE BANK MISHANDLED THE SALE OF THEIR SECOND HOME, AND WHERE, SUBSEQUENTLY, THE COURT FOUND AGAINST HER, WAS IT VIOLATIVE OF ROBERT'S DUE PROCESS RIGHTS TO ORDER HIM TO PAY FOR THE BANK'S COSTS IN THE DEFENSE OF OLIVE'S CLAIM?

1. Under the May 20, 1983 agreement, Robert assigned to the bank his personal rights to Lot #26 when he signed the deed jointly with his wife.
2. He endorsed to the bank the proceeds on the insurance check made payable to him for the fire on Lot #26.
3. As assignee of R. D. Realty Corporation, he endorsed the check for R. D. Realty Realty Corporation who was also a payee on the insurance check for loans on Lot #26.
4. As assignee of R. D. Realty Corporation, he had a lien on Lot #26 and its improvements dating back to 1974 when R. D. Realty deeded the lot to Olive Spickler.

Robert Spickler presented the aforestated facts to the trial court on several occasions, beginning at least three years before the trial in his various attempts to amend the complaint to be joined in the complaint with his wife on the mishandling of the

sale of Lot #26. (For an example of his effort to make his position clear to the Superior court see: ROBERT D. SPICKLER'S RESPONSE TO DEFENDANTS' CLAIM THAT HE IS PRACTICING UNAUTHORIZED LAW.) [APP. - Pg. A-26]

The bank's records showed, at least as early as December 1, 1979, that Olive Spickler owed R. D. Realty $75,500 for Lot #26 and its improvements.

Notwithstanding these facts which were presented to the Court throughout the years and months preceding the trial, the trial judge barred Spickler from joining his wife on the Lot #26 claim and, in fact, warned him not to present anything related to the Lot #26 claim in his case-in-chief. Robert Spickler obeyed the judge who ordered Olive Spickler to proceed alone on the Lot #26 claim.[4] The jury found for the defendants on Olive's claim. As a result of that verdict, the Court proceeded to order that the verdict applied to Robert Spickler as well, and that Robert Spickler would also be ordered to pay the defendants' costs in their defense of Olive's Lot #26 claim.

All of the aforestated facts were presented again on appeal to the State of Maine Supreme Judicial Court and were documented in the Briefs and Appendix to that Court.

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[4]Olive Spickler had not appeared at any trial before as a pro se party and had no legal training to qualify her to act for herself.

Although the Supreme Judicial Court in its Decision noted that the claim on Lot #26 was Olive's "alone", it rendered no decision or comment on the issue of whether Robert should pay for defendants' costs on Olive's loss of her lawsuit.

Robert filed a timely Motion for Reconsideration in which he submitted, in detail, the facts supporting his claim that under the circumstances of the Record with respect to Olive's claim on Lot #26, to let the judgment against him for defendants' costs stand would deprive him of property without due process of law in violation of the Fourteenth Amendment to the United States Constitution. [APP. - Pg.A-45]

The Supreme Judicial Court rendered its decision on the motion which, without comment, stated:

> Upon motion of the Appellant(s)[5] for reconsideration it is ORDERED that the Motion is hereby DENIED.
> [APP. - Pg.A-1]

This Petition for Certiorari followed.

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[5]Please note that although Olive Spickler did not take part in the Motion, this order, nevertheless, includes her in the plural of the word Appellant(s). This inconsistency of separating man and wife at times in the lower court and joining them later in the lower court and in the Supreme Judicial Court on the same issue is what this QUESTION I is trying to correct.

FACTS MATERIAL TO QUESTION II

WHERE THE DEFENDANT BANK TESTIFIED THAT IT TOOK MONEY THAT IT HELD IN TRUST FOR A DEPOSITOR AND APPLIED IT TO A THIRD PARTY'S UNPAID LOANS UNDER THE RUBRIC THAT THE TRUST DEPOSITOR WAS A GUARANTOR OF THE THIRD PARTY'S LOANS, WAS ROBERT SPICKLER, TRUST DEPOSITOR, IN FACT, DENIED HIS RIGHTS UNDER 18 U.S.C. Sec. 1962(a) WHEN THE TRIAL COURT DENIED HIS MOTION TO AMEND THE COMPLAINT TO INCLUDE THE RICO CLAIM?

Beginning over four years prior to initiating this lawsuit, Robert Spickler kept inquiring continuously of Richard Lucas as to what happened to the Chambers Point escrow account held in trust by Key Bank.

Lucas would not respond except to state that he was looking into the matter.

By 1984, Lucas told Spickler that the bank had closed out the account at some undisclosed time and paid the trust funds to itself.

Upon learning about this, Spickler filed this action in the Maine Superior Court.

Spickler did not learn in detail about this taking of funds until the trial when Lucas testified during direct examination that he had taken the money from the trust account to apply to the unpaid balance of loans it had made to R. D. Realty Corporation because Chambers Point had been a guarantor of R. D. Realty's when it borrowed from the bank.

The bank's counsel did not object to this

testimony and Spickler moved forthwith to amend the complaint to include a claim that the bank had violated federal law, specifically, 18 U.S.C. Sec. 1962(a).[6] [APP. - Pg.A-34, A-36]

The trial court acknowledged that it had jurisdiction to apply federal law, but nevertheless, forthwith, without further comment, denied the Motion to Amend the Complaint to include the RICO Claim.

Spickler assigned this error on appeal to the Supreme Judicial Court which, also without addressing the claim of error by name, appeared to have grouped it with other claims of error as being "without merit". [APP. - Pg. A-9]

Spickler then moved for reconsideration and asked the Court to again address the question of whether the lower court committed reversible error by denying him the protection of federal law. The Supreme Judicial Court forthwith, without further comment in its Decision, stated:

> Upon motion of the appellant(s) for reconsideration it is ORDERED that the motion is hereby DENIED.
> [APP. - Pg.A-1]

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[6] Me.R.Civ,Pr. 15(b) AMENDMENTS TO CONFORM TO THE EVIDENCE is a word for word adaptation of of Fed.R. Civ.Pr. 15(b).

Records of the bank as presented by Mr. Lucas during discovery and during trial testimony consisted of one computer sheet and two other handwritten documents. Mr. Lucas testified that he had personally written one of the handwritten documents, but he could not identify the scrivener of the other handwritten document which was presented at trial as Defendants' Exhibit #99.

These documents were offered by Attorney Robitzek, in an effort to support the defendant's claim that it was entitled to take the escrow funds.

There is compelling evidence that the handwritten documents were composed by Mr. Lucas after this lawsuit was initiated.

These facts together with the Proof of Facts were presented in detail on appeal to the Supreme Judicial Court in Appellant Spickler's Brief at Pages 79 to 87, and the documents were appended to that Brief at Pages Br.iv, Br.v, and Br.vi.[7]

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[7] In their copious Reply Brief to the Supreme Judicial Court the defendants made no response to the nine page Proof of Facts on this issue.

FACTS MATERIAL TO QUESTION III

> WHERE R. D. REALTY CORPORATION WAS THE PRINCIPAL PERSON IN THE TRANSACTION AND WHERE ALL OF ITS CLAIMS AGAINST THE BANK WERE ASSIGNED TO ROBERT SPICKLER, WHO ASSERTED THOSE RIGHTS, WAS IT A DENIAL OF ROBERT'S DUE PROCESS RIGHTS WHEN THE COURT RULED THAT THOSE CLAIMS COULD ONLY BE BROUGHT BY R. D. REALTY (A DISSOLVED CORPORATION) AND ONLY THROUGH A LICENSED ATTORNEY?

Much of the facts presented in support of QUESTION I are facts that support this question and are referenced here.

Among his continuing attempts to assert the rights he had acquired from R. D. Realty Corporation, Robert Spickler filed a MOTION TO FILE A SECOND SUPPLEMENTAL COMPLAINT on March 2, 1991. [APP. - Pg. A-19]

On March 15, 1991, the Superior Court [Brennan, J.] issued an order which apparently overlooks Spickler's Motion of March 2nd , and states that R. D. Realty's claim cannot be presented pro se and that the Court will permit the amended claim if R. D. Realty comes forward with counsel to represent its interests.

Spickler argued, without success, after March 15th that a dissolved corporation no longer existed and the Court's Order was, in effect, untenable.

The error was assigned on appeal to the Supreme Judicial Court which did not address it in their Decision, but apparently referred to it in their blanket statement on Page 8 of their Decision:

"The Spickler(s) remaining issues are without merit and require no discussion."

FACTS MATERIAL TO QUESTION IV

WHERE THERE WAS NO EVIDENCE THAT ROBERT SPICKLER EVER FILED A BASELESS LAWSUIT, AND WHERE THE BANK'S COUNSEL, ALTHOUGH REQUESTED ON SEVERAL OCCASIONS TO IDENTIFY ANY BASELESS LAWSUIT BROUGHT BY SPICKLER, COULD NOT DO SO; WAS IT UNEQUAL TREATMENT UNDER THE LAW FOR THE COURT TO ORDER A PERMANENT INJUNCTION UPON SPICKLER FORBIDDING HIM FROM FILING ANY LAWSUIT AGAINST THE BANK AND ITS REPRESENTATIVES WITHOUT FIRST OBTAINING THE PERMISSION OF A STATE JUDGE?

This case was proceeding toward trial for over five years when the defendants employed the Simmons law firm and Mr. Jack Simmons took charge of Defendants' case and he was joined by Simmons' partner, Mr. Robitzek, together with two or three other lawyers in the Simmons firm who assisted Simmons and Robitzek.

In November 1990, Robert Spickler was subpoenaed ducas tecum by Mr. Simmons and ordered to appear to be deposed on November 21, 1990. Spickler presented himself with the documents as ordered, but Mr. Simmons, without notice to Spickler, did not show up.[8]

By March 1991, Spickler told Mr. Simmons, and later Mr. Robitzek, that as a result of discovery

[8]Spickler filed a Motion for Costs and Sanctions but the Court [Brennan, J.] denied the motion.

completed on Mr. Lucas, Mr. Lucas was committing perjury and he asked that the attorneys take the necessary steps to eliminate such perjury at trial.[9]

On March 20, 1991, Spickler wrote a letter to Judge Brennan complaining about the misconduct of the Simmons firm and requested his supervision of that misconduct.

On or about March 25, Mr. Robitzek filed two motions, one claiming that Robert Spickler was practicing law without a license, followed by another that sought the permanent injunction against bringing a future action against the Simmons firm.

Judge Brennan did not rule on those two motions at the time they were presented.[10] However, Spickler, on September 9, 1991, brought these undecided motions to the attention of the Court within his oral memorandum in Support of the Recusal of Judge Brennan. Spickler said at the time (on the record) that if Defendants can show that a single case among the twenty submitted for judicial notice was baseless, he would immediately move for

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[9]Maine law permits a civil action against anyone testifying falsely, and his confederates. M.R.S. Title 14 Sect. 870

[10]Judge Brennan ruled on the injunction several months after the trial, but he never Ruled on the issue of whether Robert Spickler practiced law without a license. See Spickler's response to that issue. [APP. - Pg. A-26]

dismissal of all claims against the defendants in this case.

The defendants did not attempt to present the single case required to cause Spickler to move for dismissal of this case.[11]

The Order of injunction infers, nevertheless, that Robert Spickler (and his wife) make it a habit of bringing baseless lawsuits, and, because of this history, the defendants are to be protected by the injunction.

The Order also infers that the Spicklers sue judges, or threaten to sue judges for perjury, fraud or falsifying records.

The Supreme Judicial Court was told on appeal that this inference is outrageously false in that there is no evidence, nor can there be, that the Spicklers even suggested such an accusation against any judge, anywhere.

Again, with reference to the unjust inference that Robert Spickler may bring baseless lawsuits,

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[11]Spickler made this same offer of settlement at the hearing before Judge Brennan in December 1991, two months after the trial, and again, the defendants did not take advantage of his offer. Even so, on January 3, 1992, Judge Brennan issued the permanent injunction the defendants sought. [APP. - Pg.A-11] Spickler repeated this same offer on his appeal of the injunction in his brief and argument to the Supreme Judicial Court and again, no baseless lawsuit brought by Spickler was identified by the defendants/appellees in their copious brief on appeal.

this Court is asked to take judicial notice of the following judicable facts:

1. Robert Spickler, acting pro se has in three unassociated cases gone through three jury trials.[12]

2. In all of the jury cases the adversary counsel he faced were senior partners in top law firms and his adversaries were always represented by at least two trial lawyers.

3. The trials in each of the three cases took two weeks or more.

4. Spickler obtained a verdict in his favor in each of the three cases.

5. In two other cases that Spickler brought pro se, Spickler v. Halverson, Cumberland County Superior Court Docket #80-198, (1980). Spickler v. Dodd ,Cumberland County Superior Court Docket #87-690, 1987. Both Halvorsen and

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[12] Robert D. Spickler v. Robert M. York, Cumberland County Superior Court, State of Maine, Docket #79-1213 (tried April 1988).

R. D. Spickler Associates, Inc. v. Karim Zahedi, New Hampshire Superior Court, Rockingham County Docket #C-714-84 (tried 1989).

The third case is the subject Spickler v. Key Bank.

Dodd settled to avoid trial and both were represented by counsel.

6. Robert Spickler has never had a case dismissed for failure to state a claim or lack of merit. (The only time the issue of baseless claims has been found by a judge is in the subject case.)

The six facts are those of which the Court is asked to take judicial notice.

During the first day of the trial in this case on September 9, 1991, Judge Brennan made the open statement on the record in chambers that he held a "grudge" against Spickler, having to do with his ability to represent himself.

During the months previous to the trial when Mr. Robitzek entered the case and was introduced to Robert Spickler in Judge Brennan's chambers, Judge Brennan said words, to the effect, to Spickler that -I am acquainted with "Bill" Robitzek and I know how he works, and now you will see what it is like to face him.

Shortly afterwards, Mr. Robitzek at a hearing, gave a statement of facts before Judge Brennan which was inaccurate and misleading. Spickler protested on those grounds and Judge Brennan refused to question Robitzek about it or even ask him if his statements were true or false.

This honorable Court is also asked to take judicial notice of the following facts:

1. The three leading defense lawyers, Jack Simmons, William Robitzek and Paul Macri, concurrent with the time that this case was processed through the Maine Courts, were active members of various judiciary committees as consultants to the Supreme Judicial Court and worked closely with justices of that court.

2. Just previous to the period during which he sat as trial judge in this case, Judge Brennan served side by side with Associate Justice Daniel Wathen of the Supreme Judicial Court[13] as a member of the Committee on Judicial Responsibility.

3. Public financial disclosure of the members of the Supreme Judicial Court show that <u>most</u> of the members have invested in Maine Bank stocks. (Source: **Maine Sunday Telegram** December 9, 1990 Pg. 14B) Several, although not necessarily any of the judges who sat, had substantial stock in Key Bank.

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[13] Justice Wathen, now Chief Justice, who normally chooses to recuse in matters concerning Robert Spickler, specifically asked to sit in this case. Spickler did not object.

FACTS MATERIAL TO QUESTION V

WHERE PETITIONER ROBERT SPICKLER, THROUGH A TWO WEEK JURY TRIAL, WAS SUBECTED TO A MULTIPLICITY OF UNEQUAL TREATMENT BY THE TRIAL COURT, AND WHERE THE CLAIMS OF MISTREATMENT WERE OBJECTED TO AND PROVEN IN THE RECORD AND BROUGHT TO THE ATTENTION OF THE MAINE SUPREME JUDICIAL COURT ON APPEAL, WHICH APPEAL COURT, WITHOUT BASIS OR FURTHER COMMENT, DECLARED THE CLAIMS WITHOUT MERIT, WERE THE MAINE COURTS IN VIOLATION OF 42 U.S.C. Sec. 1983 BY UNLAWFULLY DISPOSING OF PETITIONER'S CIVIL RIGHTS TO DUE PROCESS UNDER THE COLOR OF STATE LAW?

While he processed his case through the trial court, Petitioner Robert Spickler was ill-treated, mistreated and unequally treated to the extent that he was obliged to assign thirty-eight substantive errors having to do with abuses of discretion on the part of the trial judge. (See the ISSUES PRESENTED ON APPEAL and presented to the Maine Supreme Judicial Court [APP. - Pg. A-38]

All of these errors were objected to on the record and are in the transcript and documents on file with the Clerk of the Superior Court for Cumberland County.

Typical of the abuse for which petitioner sought relief at the trial level was that while the trial was in progress, he was physically shoved around by defendants' counsel while he was preparing

his next witness in the hallway outside of the court room.[14]

Although Mr. Robitzek admitted the incident, when Spickler complained, the judge made no admonition to Robitzek whatsoever and the Supreme Judicial Court cavalierly supported Judge Brennan's railroading of Spickler's request for relief from the abuse.

It would take excessive space in this petition to recite the facts in support of the assignment of errors, and whetever federal rights have been taken from him within these errors, in the interest of brevity, Petitioner cannot address them in this statement of this case.

On appeal of these thirty-eight issues to the Supreme Judicial Court, that Court grouped the assigned errors, and stated that if the Decision did not address them, they were to be considered as being "without merit". They were apparently adjudged unworthy of the Court's time.

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[14]Petitioner is over seventy years old, Robitzek is pehaps forty years old.

REASONS RELIED ON
FOR ALLOWANCE OF THE WRIT

This honorable United States Supreme Court should allow the Writ of Certiorari to issue because of these reasons:

1. The Supreme Judicial Court of Maine has denied Petitioner's attempt to proceed as of right pursuant to 18 U.S.C. Sec. 1962(a).

This Decision is in conflict with the Decision of the United States Court of Appeals for the Seventh Circuit. Under virtually identical circumstances as the subject case, a Mr. Masi deposited trust funds in a special account with himself as beneficary. Later, Masi guaranteed the loans made to another person by the same bank who held Masi's trust funds. The borrower defaulted on the loan and the bank took Masi's trust account and applied it to the payment of the borrowed money on which Masi was a guarantor. Masi v. Ford City Bank and Trust Co., 779 F.2d 397 (1985); Haroco v. American National Bank and Trust Co. of Chicago, 747 F.2d 401 - 402.

The Court of Appeals for the First Circuit in Schofield v. First Commodity Corp. of Boston, 793 F.2d 28 (1986) adopted the reasoning in Masi, being brought under 1962(a) while dismissing Schofield who

brought its action unlike Masi under 1962(c).[15]

Masi has also been recognized by other circuits to illustrate how a plaintiff may bring an action against an enterprise who uses ill-gotten gains in its own enterprise.

See, for example: Bennett v. United States Trust Co. of New York, 770 F.2d 315 (2d Cir. 1985; Garbade v. Great Divide Mining and Mill Corp., C.A. 10 (Colo) 1987, 831 F.2d 212; B.F. Hirsch v. Enright Refining Co., 751 F.2d 628, 633-634 (3rd Cir. 1984) And also see the Decision of Wyoming Supreme Court in First Interstate Bank v. Big Horn F.S. & L., 770 P.2d 231 (Wyo. 1989)

Yet, in the face of so much law in conflict, the Maine Supreme Judicial Court rejected Spickler's well pleaded RICO claim by dissolving it among thirty other issues which they decided ". . . are without merit. . ."

The only discernable difference between Masi and Spickler is that Spickler acted pro se and Masi used a lawyer.

2. For years, while this case was proceeding toward trial, Spickler tried so many times on several logical grounds to be given standing with his wife to claim that the bank mishandled the sale of Lot #26. He was barred from this claim

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[15] If Spickler had sought to amend by citing 1962(c) rather than 1962(a), his complaint would have been defective too.

by the Superior Court and the Supreme Judicial Court who ruled that the Lot #26 claim was Olive's alone.

Under those circumstances, why should Robert be ordered to pay the defendants' costs in defending the claim on Lot #26?

The Fourteenth Amendment's protection of Robert's right to not be deprived of his property without due process of law was taken from him by the Supreme Judicial Court who, again, ignored this issue by grouping it in among the multiple issues it said are without merit. Anyone reading the Decision would never realize that this important constitutional infringement was ever even raised by Robert Spickler. Nowhere in the Decisions is the phrase 'Fourteenth Amendment' mentioned.

3. In addition to the foregoing errors, the Supreme Judicial Court let stand a permanent injunction on Robert Spickler which further closed the doors of the Maine Courts to him without any evidence of misconduct on his part which would warrant such drastic measures.

Petitioner does not question the right of any court to take that type of action when the misconduct of a litigant warrants it. Plaintiffs who injure people with baseless lawsuits should be restricted from using the courts irresponsibly.

But Spickler's history in the courts does not warrant the infringment on his constitutional right to equal access to the courts on a level playing

field with everyone else, whether they be lawyers or non-lawyers.

The Order of Injunction says that Spickler is placed under restriction because he may bring a "baseless claim" against the lawyers who represented the bank, as well as the bank. But, since Spickler has not yet brought the claim how can it be pre-judged as being baseless?

Who else in Maine has been placed under the same restrictions? No one that Spickler knows of.

How many lawyers in Maine or anywhere else in the country have been placed under similar restrictions?

What baseless lawsuit did Spickler bring and when did he do it? Could Spickler be as successful as he has been in his actions if those actions were baseless?

Are there lawyers practicing in Maine who have really brought baseless lawsuits? Probably, but those lawyers who probably brought baseless lawsuits simply to browbeat a defendant into a settlement are not punished. **Is this equality under the law?**

This injunction against Spickler cancels the guarantee of equal treatment under the law. The Fourteenth Amendment does not exist for Robert Spickler unless this honorable Supreme Court exercises its powers and reinstates him as a complete citizen, or, in the alternative, demands from his adversaries the proof that others have been

treated as he has been, under similar circumstances.

4. R. D. Realty Corporation never got its day in court in this dispute. By assignment, Robert Spickler pursued those claims in an orderly and timely manner. The defendants simply claimed they would be prejudiced, although there were years to go before trial. That was enough to sustain an order that the R. D. Realty claims, although assigned to Spickler, were forbidden in this case.

Now the statute of limitations prevents any of those claims to be brought ever again unless this honorable Supreme Court intercedes.[16]

5. The State of Maine, under the color of state law has dealt harshly with Robert Spickler who, as a pro se litigant has trained himself to be his own lawyer. He has conducted himself in a reasonable manner, observing a standard of deportment that he knows is at least as good as that of practicing licensed attorneys. The record of this trial shows he has been singled out and mistreated while pursuing his due process rights through the trial court with the tacit approval of the state's highest court.

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[16] Robert Spickler's total compensatory damages as assignee of R. D. Realty Corporation exceed $7,000,000.

This Court is asked to ponder what would have happened to Spickler if he were half the age of Mr. Robitzek and shoved Robitzek around the courthouse and Mr. Robitzek sought Judge Brennan's help.[17]

WHEREFORE, to preserve Petitioner's federal rights, those under the Fourteenth Amendment of the Constitution of the United States, as well as those that Congress has enacted into law in 18 U.S.C. Sec. 1962(a) and Sec. 1964(c) and 42 U.S.C. Sec. 1983,

Petitioner prays that this honorable Court will issue the writ and proceed to review the final judgments of the State of Maine Supreme Judicial Couort which are dated December 11, 1992 and January 25, 1993.

Respectfully submitted this 24th day of April 1993.

Robert D. Spickler,
Petitioner

HCR 31 - Box 109
Phippsburg, Maine 04562

Tel. 207/389-2464

[17] It is judicially noticeable to this Court that in 1992, in Spickler v. Greenberg, Cumberland (Maine) Superior Court Docket #85-687, Judge Brennan recused on Spickler's motion and, in fact, interrupted Spickler by saying, in effect, under the "reasonable man" standard - people would believe he was biased against Spickler, given his decision to place the injunction on him.

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1993

ROBERT D. SPICKLER,
Petitioner

v.

KEY BANK OF SOUTHERN MAINE, and
RICHARD LUCAS,
Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT
OF THE STATE OF MAINE

APPENDIX

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STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court

Docket No. 6388
Decision No.Cum-92-44

ROBERT D. SPICKLER, et al.
Appellants

v.

KEY BANK OF SOUTHERN MAINE et al.
Appellees

ORDER

Upon motion of the appellants for reconsideration, it is ORDERED that the motion is hereby DENIED.

It is FURTHER ORDERED that the mandate shall issue forthwith.

Dated January 25, 1993

For the Court

/s/
David G. Roberts, Associate Justice

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. 6388
Law Docket No.CUM-92-44

ROBERT D. SPICKLER et al.

v.

KEY BANK OF SOUTHERN MAINE et al.

Argued November 20, 1992
Decided December 18, 1992

Before WATHEN, C.J., and ROBERTS and CLIFFORD, JJ., and WERNICK, A.R.J.

ROBERTS, J.

Plaintiffs Robert D. Spickler and Olive S. Spickler appeal, and defendants Key Bank of Southern Maine and Richard E. Lucas cross-appeal, from a judgment entered in the Superior Court (Cumberland County, Brennan, J.). In addition, the Spicklers appeal from an order enjoining them from bringing meritless lawsuits based on the facts of the case at bar. Although we modify the judgment with respect to the personal liability of Richard Lucas, we affirm in all other respects.

I.

The Spicklers are real estate developers who sought to develop several pieces of property during the 1970s and early 1980s. Due to a number of factors their projects failed, and by mid-1979 they

had defaulted on their line of credit with Depositors Trust Company, Key Bank's predecessor. Although the debt was primarily the obligation of R. D. Realty, the Spicklers' corporation, it was also guaranteed by them personally as well as by their other corporation, Chambers Point, Inc.

The Spicklers purchased an oceanfront parcel at Roque Bluffs in Washington County in an effort to develop a 65-lot subdivision. Unfortunately, they had no legal right of access to the property, and electricity was over two miles away. In an attempt to sell the property, the Spicklers tried to auction 63 of the lots. To induce sales, they agreed to escrow 10% of the purchase price, which would not be paid to Chambers Point until the Spicklers certified that a road and electricity had been brought to the property. Immediately after the auction the neighbors successfully sued, claiming that there was no right of access over their land.

Another project at issue in this suit is the Spicklers' Parkers Head development on the Kennebec River in Phippsburg. Despite their efforts, only one parcel, Lot 26 owned solely by Olive Spickler, was ever developed. The Spicklers again became involved in litigation when Roger Dube sued for foreclosure on his purchase money mortgage on the Parkers Head property. The court ordered foreclosure of the mortgage, and the Bank's security evaporated because its interest was subordinate to

the Dube mortgage which exceeded the value of the property. As a result of their dealings with Dube, the Spicklers obtained a judgment against him for a real estate commission.

The Spicklers then arranged with the Bank to compromise their debt. The Bank agreed to dispose of certain assets, including Lot 26 and the Spicklers' home, and accept the amount recovered, up to $235,000, in full satisfaction of the debt. The Bank received approximately $195,000 from the disposition of the assets.

The Spicklers commenced this action in a three-count complaint filed in March 1985. Count I alleged misappropriation of the Chambers Point escrow account. Count II, brought by Olive Spickler alone, alleged breach of an oral contract to dispose of Lot 26 by public auction. Count III alleged that the defendants negligently failed to collect the Dube judgment that the Spicklers had assigned to them. Although the Spicklers moved to amend and supplement the complaint numerous times with varying degrees of success, these are essentially the claims that were submitted to the jury.

The jury returned a verdict for the defendants on the Dube claim and the Lot 26 claims, and for the Spicklers on the Chambers Point escrow claim. It awarded the Spicklers damages of $4,420. The court also granted the defendants' motion for a permanent injunction enjoining the Spicklers from bringing

frivolous lawsuits based on the facts of this suit. This appeal and cross-appeal followed.

II.

The Appeal

The Spickler argue that the court erred in denying their motion to file a second supplemental complaint pursuant to M.R.Civ. P. 15(d). They contend that the court was inconsistent in granting their motion to file a first supplemental complaint that permitted Spickler to assert the claims assigned to him by Chambers Point, but denying their motion to file a second supplemental complaint that would have permitted him to assert the claims assigned to him by R. D. Realty.

Unless the adverse party can demonstrate that his position will be prejudiced by the allowance of a supplemental pleading, the court will ordinarily grant the motion. Rancourt v. City of Bangor, 400 A.2d 354, 356 (Me. 1979). We review the denial of a motion to file a supplemental pleading, however, only for an abuse of discretion. Id. at 357. Unlike the first supplemental complaint, which merely reasserted personally those claims of Chambers Point contained in Count I of the original and first amended complaints, the second supplemental complaint contained three new claims for which additional discovery would be required. We conclude, therefore, that the court acted within its discretion in denying the motion.

The Spicklers also argue that the court erred in refusing to give their proposed jury instruction #8, which stated:

> You must decide whether the bank used its best efforts to realize the highest possible recovery for the assets conveyed by the May 20th, 1963 letter.

There is no error in a trial court's refusal to give a proposed jury instruction that contains an inaccurate statement of the law. Because the Bank was under no olbigation to obtain the "highest possible recovery" for the assets, the court's refusal to give the instruction was not error.

As evidence of consequential damages on the Chambers Point escrow claim, Spickler made an offer of proof that the Bank's failure to release $1,000 from the escrow account prevented him from purchasing real estate from which he would have realized a profit of approximately $150,000. The court did not allow Spickler to present such evidence on the ground that in pretrial proceedings he had not disclosed that particular claim for consequential damages. In any event, the offer of proof established that the claim for lost profits was too speculative to support an award of damages.

During the jury's deliberations, it was discovered that a juror had discussed the case with a friend. The court, acknowledging the seriousness of the situation, explored several options with the parties, including proceeding with seven jurors or ordering a mistrial. Although they initially

requested a mistrial, the Spicklers ultimately agreed to proceed with seven jurors. They now argue that the court erered in not ordering a mistrial. We disagaree. Because the Spicklers agreed to proceed with seven jurors, they waived any claim of error. See New England Whitewater Center, Inc. v. Department of Inland Fisheries & Wildlife, 550 A.2d 56, 59 n.5 (Me. 1988).

The Spicklers argue that the court erred in denying Spickler's post-verdict motion to allow punitive damages. "An award of punitive damages is justified where the plaintiff proves by clear and convincing evidence that the defendant acted with malice." Boivin v. Jones & Vining, Inc., 578 A.2d 187, 189 (Me. 1990) (citing Tuttle v. Raymond, 494 A.2d 1353, 1354 (Me. 1985). In his memorandum Spicker stated that "[p]unitive damages are recoverable for wanton reckless disregard for plaintiff's rights." This, however, is precisely the standard we rejected in Tuttle. See Tuttle, 494 A.2d at 1360-61. Because Spickler relied on a plainly incorrect statement of the law regarding the recovery of punitive damages the court did not err in denying his motion.

During the trial there was a confrontation between Spickler and the defendants' attorney, during which the Spicklers allege that the attorney physically interfered with Spickler's conference with a witness. After hearing both versions of what

had transpired, the court declined to sanction the attorney, and instead ordered a court officer to be present in the courtroom and in the corridor until the end of the trial. The Spicklers argue that the court erred in failing to sanction the attorney. We conclude, however, that the court acted well within its discretion in not imposing sanctions on the attorney. Cf. Green v. Nemat, 499 A.2d 470, 471-72 (Me. 1985) (trial court has broad discretion in imposing sanctions for discovery violations).

The Spicklers argue that the court abused its discretion in granting the defendants' motion for a permanent injunction against them because it impermissibly restricts their access to the courts. It is well-settled that a court may enjoin a party from filing frivolous and vexatious lawsuits. See, e.g., Gordon v. Department of Justice, 558 F.2d 618 (1st Cir. 1977); Clinton v. United States, 297 F.2d 899, 902 (9th Cir. 1961); Liedtke v. Fillenworth, 372 N.W.2d 50, 52 (Minn. App. 1985). The party seeking the injunction, however, must make a detailed showing of a pattern of abusive and frivolous litigation. Castro v. United States, 775 F.2d 399, 408-09 (1st Cir. 1985); Whatcom County v. Kane, 31 Wash. App. 250, 640 P.2d 1075, 1077 (1981). The court must be careful not to issue a more comprehensive injunction than is necessary. Id.

In reaching its decision on this issue, the court judicially noticed a number of lawsuits

involving the Spicklers and their corporations. After a review of those cases, the court specifically found that "[h]istory suggests that the Spicklers will continue to sue individuals involved in this litigation unless the injunction issues" and that "intentions to file such a suit have already been voiced."

The court's injunction does not bar the Spicklers from bringing meritorious claims based on these matters. Rather, it establishes a screening mechanism whereby any future complaints by the Spicklers will be examined to protect the defendants and their agents from baseless claims. Because there is ample evidence in the record to support the trial court's factual determinations, and because the injunction sweeps no broader than necessary to protect the defendants from frivolous litigation, the grant of the injunction was not an abuse of discretion.

The Spicklers' remaining issues are without merit and require no discussion.

III.

The Cross-Appeal

The only issue we need address on the defendants' cross-appeal is their argument that the court erred in denying their motion for judgment notwithstanding the verdict with respect to the Spicklers' recovery on the Chambers Point escrow count. When reviewing the denial of a motion for

judgment notwithstanding the verdict, the Law Court examines the evidence in the light most favorable to the appellee and determines whether any reasonable view of the evidence, including all justifiable inferences drawn therefrom, can sustain the verdict. Schiavi v. Goodwin, 542 A.2d 367, 368 (Me. 1988); Buchanan v. Martin Marietta Corp., 494 A.2d 677, 678, (Me. 1985). The burden is on the moving party to show that the adverse verdict is "clearly and manifestly wrong." Schiavi, 542 A.2d at 368 (quoting Bowie v. Landry, 150 Me. 239, 241, 109 A.2d 314, 315 (1954)).

The verdict form submitted to the jury on the Chambers Point escrow claim presented contractual and tort theories of recovery. Although the jury found the defendants to be liable in both contract and tort, it awarded damages only for the breach of contract. Because defendant Lucas was an agent with a disclosed principal, however, he cannot be held liable for breach of contract. See McKeen v. Boothby, 129 Me. 324, 326, 152 A. 53, 54 (1930). thus, no reasonable view of the evidence can sustain a finding that Lucas is liable for contract damages.

The finding is:

Judgment modified to delete the personal liability of defendant Richard E. Lucas, and as so modified, affirmed.

All concurring.

For the Plaintiffs:

Robert D. Spickler, pro se (orally)
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Attorney for the Defendants:

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STATE OF MAINE

CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV85-245

ROBERT D. SPICKLER, and
OLIVE S. SPICKLER,
Plaintiffs

v.

KEY BANK OF SOUTHERN MAINE,
and RICHARD E. LUCAS
Defendants

JUDGMENT

Pursuant to the Jury's responses to the questions on the Verdict Forms, the Clerk is directed to make the following docket entry:

On Count I, Dube Judgment, of the Plaintiffs' complaint, JUDGMENT found on behalf of the Defendants, Key Bank of Southern Maine and Richard E. Lucas, and against the Plaintiffs, Robert and Olive Spickler.

On Count II, Lot 26, of the Plaintiffs' complaint, JUDGMENT found on behalf of the Defendants, Key Bank of Southern Maine and Richard E. Lucas, and against the Plaintiffs, Robert and Olive Spickler.

On Count III, Escrow Account, of the Plaintiffs' complaint, JUDGMENT found on behalf of the Plaintiffs, Robert and Olive Spickler, and against the Defendants, Key Bank of Southern Maine and Richard E. Lucas, in the amount of $4,420.00, with costs.

DATED: 9/26/91

/s/

G. Arthur Brennan
Justice, Superior Court

STATE OF MAINE

CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV85-245

ROBERT D. SPICKLER, and
OLIVE S. SPICKLER,

Plaintiffs

v.

ORDER

KEY BANK OF SOUTHERN
MAINE and RICHARD E.
LUCAS,

Defendants

The defendants have requested that this court issue an injunction against further litigation surround the Parker Head and Rogue Bluffs properties involving Robert and Olive Spickler in their various capacities and the defendants along with their counsel. They have also requested that this court take judicial notice of a number of federal and State of Maine lawsuits involving Robert and/or Olive Spickler R.D. Realty and Chambers Point, Inc. These motions are both granted.

History suggests that the Spicklers will continue to sue individuals involved in this litigation unless the injunction issues. Indeed, intentions to file such a suit have already been voiced. The letter submitted in support of defendants' motion, the continuing attempts to amend or supplement the original complaint in this matter, and the other lawsuits of which I have taken judicial notice reflect the Spicklers' intention

towards Key Bank, Richard Lucas and their counsel and demonstrate the Spicklers' familiarity with and ability to effectuate their intentions.

Unfortunately, and for these reasons, such an injunction must issue given the never ending litigations and great costs. Defendants suffer irreparable harm by having to repeatedly defend multiple lawsuits and claims. The injury the defendants seek to avoid outweighs any harm which granting the injunction would inflict on the Spicklers. The injunction is tailored so that the Spicklers are not absolutely restricted from bringing lawsuits against the defendants or their agents but would only be restricted from bringing claims concerning the May 20, 1983 Letter of Agreement between the parties, and their banking relationship involving the so-called Parker Head and Rogue Bluffs lands. The Spicklers are not barred from bringing meritorious claims concerning these subject matters. The injunction sets up a screening process which will protect the defendants and their agents from having to defend against baseless claims.

The public interest is also served by granting the injunction. The defendants are protected from having to defend baseless claims. The plaintiffs are permitted to bring meritorious claims. The court is able to exercise its inherent authority to control its docket, prevent a multiplicity of suits

and serve valuable judicial resources by not having to devote the time of the court and court personnel to administering repetitive lawsuits.

Wherefore, the entry shall be:

> Plaintiffs Robert and Olive Spickler, R. D. Realty Corp., Maine Coast Properties, Inc. and Chambers Point, Inc., their agents or persons acting in concert with them, are hereby enjoined permanently from filing any complaint or additional counts or claims in any Maine court relating to the May 20, 1983 Letter of Agreement between the parties or their banking relation involving the so-called Parker Head or Rogue Bluffs lands including, but not limited to, lawsuits accusing Key Bank, or Richard Lucas, agents or a party (including, attorneys, law offices, or employees of law offices), judges or witnesses in this or any of the aforementioned proceedings, of perjury, fraud, or falsifying evidence, unless the plaintiffs, before they file any further action, satisfy a Justice of this court that the action they seek to file is supported by evidence other than the plaintiffs' uncorroborated allegations or affidavits.
>
> This Order may be incorporatead by reference on the docket.

DATED: January 3, 1992

/s/

G. Arthur Brennan
Justice, Superior Court

STATE OF MAINE

CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV85-245

ROBERT D. SPICKLER, and
OLIVE S. SPICKLER,

Plaintiffs

v.

KEY BANK OF SOUTHERN
MAINE and RICHARD E.
LUCAS,

Defendants

ORDER

On March 1, 1991 tfhe following pre-trial motions came on for hearing[1]:

1. Plaintiffs' motion to join R & D Realty as a necessary party.
2. Defendants' request for a procedural order.
3. Defendants' motion to compel.

Motion to Join

The Spicklers planned to develop and sell residential real estate in Phippsburg, Maine. To accomplish this, they, along with another, purchased the stock of R & D Realty, the corporation which owned the land. When the development project did not proceed as planned, several substantial pieces of litigation followed.

Count I of this complaint was dismissed, in essence, because the Spicklers could not prosecute a

[1]Other motions principally in the nature of motions in limine concerning the admissability of certain evidence were discussed, however, I indicated that I would defer rulings on such issues until trial.

stockholders derivative suit pro se. That is, they could not themselves represent the interests of a corporation in court. By amendment permitted on October 30, 1990, the original Count I was resurrected as a new Count V when the corporation was dissolved and its rights assigned to Robert Spickler personally. R & D Realty Corp. formerly controlled by the Spicklers, has also been dissolved and its interests assigned to Robert Spickler personally. The same principals which have been applied earlier should apply now. To the extent that R & D Realty Corp., now dissolved, has any vital interests at stake, those interests cannot be represented by the Spicklers pro se. Thus, the motion to join will be granted on the condition that a Maine lawyer appears and represents the interests of the corporation. Otherwise, it will be denied.

Procedural Order

At a pre-trial conference on October 30, 1990, when the amendment adding Count V was permitted, the prospective trial judge decided to sever Count V for later trial. Apparently it was thught that further discovery was necessary and appropriate. Trial did not begin a planned because the trial judge decided to step aside. Since then numerous discovery disputes have arisen with each side alleging that the other is at fault. The net result is that the discovery relating to Count V has not gone forward. I am not in a position right now to determine which

side is creating the difficulties--perhaps, it is mutual. In any event, we are in no better position to proceed on Count V today than we were on October 30, 1990. Counta V will be severed and trial held at a later time when the discovery issues are resolved.[2]

Motion to Compel

One discovery issue deserves attention at this time. The Bank has requested that the Spicklers admit that a certain lot had sewer permits available or it did not. The Spicklers are to respond to the request for admissions within seven days.

The clerk may incorporate this order in the docket by reference.

DATED: March 15, 1991

/s/
G. Arthur Brennan
Justice, Superior Court

[2]It should be noted that on March 5, 1991 the Spicklers filed a motion to add two additional counts to the complaint. This motion will be taken up at a later time.

STATE OF MAINE

CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV 85-24

ROBERT D. SPICKLER, and
OLIVE S. SPICKLER,
PLAINTIFFS

v.

KEY BANK OF SOUTHERN MAINE,
and JOEL W. STEVENS, and
RICHARD E. LUCAS,
DEFENDANTS

PLAINTIFF ROBERT D. SPICKLER'S DESIGNATIO OF ISSUES HE INTENDS TO PRESENT AT TRIAL.

Plaintiff Robert D. Spickler, in his individual capacity including all rights that he has acquired due to the dissolution of Chambers Point, Inc. and R. D. Realty Corporation, intends to present the following issues to the jury:

1. Should the bank have obtained more than $235,000 from the following assets?

   (a) Real estate owned by Olive S. Spickler on Old Neck Road in Scarborough, Maine.

   (b) Real estate owned by Olive S. Spickler located in Phippsburg, Maine.

   (c) Real estate owned by R. D. Realty Corporation in Phippsburg, Maine.

   (d) Assignment of commission due from Roger Dube to Robert D. Spickler.

   (e) Assignment of the Insurance Proceeds

2. Was it wrong for the bank to apply the escrow deposit that belonged to Chambers Point to the R. D. Realty indebtedness?

3. While deeding the real estate of R. D. Realty Corporation to Mr. Ginn, did Key Bank deed more property to him than they had title to?

4. With reference to Question #3., did the bank know or should it have known at the time of deeding R. D. Realty's property to Ginn that there were at least four lots in that property that belonged to other individuals?

5. Did Mr. Lucas persuade the Spicklers to sign the May 20th letter by mirepresentations and deceitful promises?

6. Damages applicable to each of the five Issues.

Respectfully submitted this 20th day of November 1990.

/s/

Robert D. Spickler
Plaintiff pro se

HCR 31 - Box 109
Phippsburg, Maine 04562

Tel. 207/389-2464

STATE OF MAINE

CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV 85-245

ROBERT D. SPICKLER, and
OLIVE S. SPICKLER,
PLAINTIFFS

v.

KEY BANK OF SOUTHERN MAINE,
and JOEL W. STEVENS, and
RICHARD E. LUCAS,
DEFENDANTS

PLAINTIFF ROBERT D. SPICKLER'S MOTION TO FILE A SECOND SUPPLEMENTAL COMPLAINT

1. On February 28, 1991, Plaintiff Robert D. Spickler filed a MOTION TO JOIN R. D. REALTY CORPORATION AS A NECESSARY PARTY PURSUANT TO RULE 19(a).

2. During the hearing on that motion, the Court seemed to have some reservations as to whether the interests of a corporation as a necessary party whose rights had been acquired by an individual could be represented by that individual acting pro se after the corporation was dissolved.

3. There may be some procedural defect in the manner by which Spickler sought to press the rights that he acquired from R. D. Realty, however, the original rights of the now defunct R. D. Realty Coporation are clear and there is no question that those rights are now legally his.

4. If the Court concludes, as a matter of law, Spickler cannot proceed with his claim in accordance with the February 28th motion, then the Court is asked to consider this Motion to File a Supplemental Complaint, alternately.

5. The basis of this action arises from the relationship between R. D. Realty Corporation, a depositor and borrower of funds from Depositors Trust Company and the methods by which the borrowed funds were paid to the bank.

6. Although Plaintiff learned early in 1986 that Defendants had betrayed R. D. Realty Corporation, he had also learned by then that, under Maine law, a shareholder's derivative action could not be brought pro se and, until 1989, upon the dissolution of R. D. Realty Corporation when Plaintiff acquired the rights of R. D. Realty Corporation, he had no personal standing to seek relief for what he lost through R. D. Realty Corporation.

ARGUMENT

Plaintiff finds support for this motion in both Rule 15d and 24(a).

The admissibililty of Counts VI and VIII is supported by Rule 15d and the admissibility of Count

VII is supported by Rule 24(a)(2).

Rule 15d Me.R.Civ.Pr. reads as follows:

> (d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transaction or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefore.
>
> [Emphasis added]

The difference between a supplemental pleading and an amended pleading is that the former covers events which occur after the signed pleading was filed. 1 F.McK.& W. Me Civ.Pr.2d (1980) Pg. 307.

In Counts VI and VIII, these claims are a continuation or addition to the original complaint and are related to the claim originally stated. Id. at 307.

In Rancourt v. City of Bangor, 400 A.2d 354 (Me. 1979) the trial court denied Rancourt's motions for leave to file supplemental pleadings to address changes in zoning regulations which occurred while the case was pending in the Superior Court. The Law Court reversed, stating:

> . . . "a party should not be put to the expense and aggravation of commencing a new lawsuit when events bearing on, arising out of, or relating in some reasonable way to matters originally pleaded occur after the the complaint has been filed."

If this motion is denied, it will have occurred at a time when the civil court jury trial system is in a condition much different from what it was in 1979 at the time of Rancourt. To force the plaintiff to bring a new action to obtain the relief sought here will not only be more expensive to him, but it will burden the court system irrespective of the outcome of the first trial with another trial with much the same issues, most of the same witnesses, theories of law and another two weeks minimum of trial.

Most of this will have been avoided by consolidating all issues together in one trial.

Under virtually identical circumstances, Judge Cole, on October 30th, 1990, permitted this plaintiff to proceed with Count V to press the rights he obtained with the dissolution of Chambers Point, Inc.

Shouldn't the Court come to the same conclusion as to the dissolution of R. D. Realty Corporation?

As to the claim of Robert D. Spickler under Count VIII, he learned of the bank's conduct in unlawfully disposing of the four lots in January 1986, at which time he was not the owner of those lots.

By November 1990, he acquired ownership of those lots which is the requisite occurence that happened after the original complaint which permits him to enter his supplemental claims in the case

under 15d.

Denial of the motion to admit Count VIII will unfairly result in a new lawsuit which is contrary to the reasoning of the Law Court in its preceding decision.

As to Count VII, R. D. Realty, under the circumstances, and the facts alleged, had the right of intervention pursuant to Me.R.Civ.Pr. 24(a) which Movant sets forth here for the convenience of the Court.

> 24(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.
>
> [Emphasis added]

R. D. Realty's interest in Lot #26 is superior to that of Olive S. Spickler who has not contributed one dollar toward its purchase from the corporation. The corporation has made one hundred per cent of the original investment in the property and, in effect, has the interest of a mortgagee.

Should the issue of the defendants' culpability be resolved, in former R. D. Realty's (or, as in this case, Robert D. Spickler's) absence, the decision would have no res judicata effect on Plaintiff Robert Spickler who will have no choice

but to bring a separate action against the same defendants irrespective of the decision in this case.

Naturally, the defendants, who have been aware of this claim for years (see STATEMENT OF FACTS in Plaintiffs' Pretrial Memorandum and the issues presented therewith) will protest that they will be prejudiced!

Will they be slightly inconvenienced? Yes. Any prejudice that the Court feels they will experience can be cured by the Court granting leave to make further discovery.

However, if the plaintiff is to be spared real prejudice, this further discovery should not be of prolonged nature. It bears repeating that these claims are not new and Defendants should have been aware that they would be called upon to defend them at least since deposing the plaintiffs in 1987.

In 1 Field, McKusick & Wroth, supra at 305, the authors state:

> "A continuance may be granted to the objecting party if necessary to avoid prejudice . . . The result seems entirely fair, however, when he sees what the thrust of the evidence is and has a reasonable opportunity to meet it."

CONCLUSION

In the interest of justice, Plaintiff, who has been damaged, perhaps at this stage of his life, irreparably by the misconduct of the defendants, should at least be given the most expedient forum to

obtain the limited relief available to him. At his age he should not have to suffer the additional burden of delay.

In addition, it would be contrary to efficient operation of the jury trial system to force Plaintiff to begin a new action which would require another two or three weeks of trial.

The time has come for this dispute to be settled for all time. It would be a misapplication of the Court's discretion to deny this motion.

Respectfully submitted this 2nd day of March 1991.

/s/

Robert D. Spickler
Plaintiff pro se

HCR 31 - Box 109
Phippsburg, Maine 04562

Tel. 207/389-2464

STATE OF MAINE

CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV 85-245

ROBERT D. SPICKLER, and
OLIVE S. SPICKLER,
PLAINTIFFS

v.

KEY BANK OF SOUTHERN MAINE,
and JOEL W. STEVENS, and
RICHARD E. LUCAS,
DEFENDANTS

PLAINTIFF ROBERT D. SPICKLER'S RESPONSE TO DEFENDANTS' CLAIM THAT HE IS PRACTICING UNAUTHORIZED LAW.

Plaintiff Robert D. Spickler responds as follows:

1. Robert D. Spickler is accused by the defendants of practicing unauthorized law because they allege he is somehow representing his wife, Olive S. Spickler, in this action.
2. Robert D. Spickler represents only himself in all counts contained in this action.
3. He knows, by law, that he cannot represent any corporation or any other individual and he abides by the law.
4. However, when he obtains rights from a dissolved corporation of which he was the sole shareholder or assignee of that corporation, those rights become his rights and, under the law he may pursue those rights only for himself in any action in the State of Maine.
5. Upon the dissolution of R. D. Realty Corporation, whose rights and interests before dissolution made it a necessary party, Robert Spickler can and does proceed to

assert those former corporate rights and interests for himself. [13 A M.R.S.A., Sec. 1122]

6. As to Count III concerning a claim based on the defendants' mishandling of the house and lot deeded to Olive Spickler, Robert D. Spickler has the interest of R. D. Realty as the contractor and the lender, and therefore invokes those rights and interests as a necessary party, as well as an intervenor, pursuant to Rules 19(a) and 24(a).

7. Even if Robert D. Spickler had not acquired R. D. Realty's rights as above stated, he has standing to claims under the deed held by Olive S. Spickler as her lawful spouse under the statutory presumption set forth in 19 M.R.S.A. Sec. 722A where property acquired by either spouse, subsequent to marriage and prior to a decree of separation is presumed to be marital property regardless of which partner holds title.

8. In addition, the underwriter Aetna Insurance Company's settlement of the fire damage to the house on Lot #26 shows the insured as Robert D. Spickler and Olive S. Spickler, and R. D. Realty Corporation, in that order, as payees before Depositors Trust. Without Robert D. Spickler's signature, as well as R. D. Realty's signature, the insurance proceeds would not

have been paid to the bank.

9. The defendants always knew, and understood that Robert D. Spickler, as well as R. D. Realty Corporation had interests in the house and Lot #26. Not only have they discussed it many times with the plaintiff, their own documents confirm this understanding. For example, see Exhibits A, B, C and D attached:

EXHIBIT "A" Deed to defendant bank showing Robert D. Spickler as joint grantor of lot.

EXHIBIT "B" Richard Lucas's Memorandum showing the necessity of listing "Bob" and Olive Spickler to show their proof of loss on the fire on Lot #26.

EXHIBIT "C" A copy of the check paid by Aetna listing Robert and Olive Spickler as the insured, as well and Robert D. Spickler and Olive Spickler and R. D. Realty Corporation as payees.

EXHIBIT "D" Defendants' Memorandum of Law showing that they always knew that R. D. Realty was the contractor who built "Olive"s house for which it did not receive payment.

CONCLUSION

Robert D. Spickler is not representing his wife's interest in Lot #26, nor need he since he has his own interests in that lot and can proceed to prove those interests and the damages arising therefrom in his own right.

Respectfully submitted this 25th day of March 1991.

/s/
Robert D. Spickler,
Plaintiff pro se

HCR 31 - Box 109
Phippsburg, Maine 04562

Tel. 207/389-2464

Parker Head Road
HCR 31 - Box 109
Phippsburg, Maine 04562

Tel. 207/389-2464

September 9, 1991

The Honorable G. Arthur Brennan
Justice of the Superior Court
Cumberland County Courthouse
P. O. Box #287 - 142 Federal Street
Portland, Maine 04010

RE: Spickler, et als. v. Key Bank, et al.
Docket No. 85-245

Dear Judge Brennan:

I offer this letter in place of a motion in limine. You gave me permission to submit a Motion in limine with the purpose of clarifying the law as it relates to the posture of R. D. Realty's former interest in the transaction which is the root of this lawsuit.

You have ruled several times on the issue of whether the
former interest of R. D. Realty Corporation should be permitted to be pleaded by me, individually.

From your previous decisions and commentary, you seem to indicate that you have concluded that R. D. Realty Corporation, although it has been dissolved, still retains some residual status as a vital corporation and it therefore must be represented by an attorney and not be me, pro se.

As you know, this very same set of circumstances was addressed by Judge Cole in this case prior to your entry, and he concluded that upon its dissolution, Chambers Point, Inc. interests in the lawsuit became my personal interests and he forthwith permitted me to amend my complaint to include those interests, acquired from Chambers Point on my own.

For some reasons which I am still confused about, your honor has refused to recognize the identical circumstances as to R. D. Realty Corporation.

In opposition to my attempts which have continued, as the docket shows, over the past four years the defendants, who have several attorneys who have been working on this case offer no law, no rule of procedure, to contradict the line of reasoning and law, and rule with which I have supported my right to standing before the court in this trial on that issue.

The Law of Maine on this Issue:

13A M.R.S.A., Sec, Sec. 1122 provides that upon the dissolution of a corporation the rights, interests and liabilities of the corporation revert to the shareholders. I was the sole shareholder at the time of dissolution, and therefore, all of R. D. Realty's former interest in this lawsuit became mine on June 12, 1989. (See articles of Dissolution

attached hereto.)

Mr. Robitzek makes much of the Decisions of denial of motions to amend to include the former interests of R. D. Realty, but he fails to point out the the Court that when the issue was decided, it was before the dissolution of R. D. Realty Corporation.

The same set of conditions caused Judge Perkins to dismiss the Chambers Point claim (former Count I) before its dissolution, which, of course, caused Judge Cole to reinstate my claim for the escrow funds after Chambers Point's dissolution.

Rule 15 is very clear that R. D. Realty'c claim should be permitted. I have carefully studied the decisions as well as all of the commentary on this Rule; all of which have been presented in the record and I point out to you, your honor, that there are no decisions to be found that would permit the Court to continue to keep me from pleading my claims.

A review of the defendants responses shows that they have failed to come up with any law, rules or decisions that controvert my legal theory on this issue.

Their opposition to my claim consists only of a protest that they would be prejudiced. Even with that , the never show how!
They do fill dozens of pages with immaterial matters, irrelevant facts, inflammatory innuendo, plus rhetoric and cliches.

On the threshold of the trial, I believe that, in the interest of justice, the Court should direct the defendants to come up with appropriate legal authories so that the Court has the requisite information to correctly decide what course it will take as the trial progresses.

The Court has made it clear that it reserves the right to change its mind as this case proceeds.

I believe it is a fair statement that the Court realizes that the plaintiffs and the defendants are far apart in their ideas of what this dispute is all about.

The Court said today that it may well be that God only knows for sure, and the true picture of the case is somewhere between what the parties believe it to be.

In view of this, I ask the Court not to necessarily reverse its decision and permit the amended pleadings, but to reserve that judgment and permit the evidence to unfold while instructing the jury that they are not to consider any claims for damages or liability arising from the fact that R. D. Realty Corporation granted a deed to the bank to the bank on May 23, 1991.

Respectfully yours,

Robert D. Spickler
Plaintiff pro se

RDS:o
Enc
Copy to: W. Robitzek

STATE OF MAINE

CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV 85-245

ROBERT D. SPICKLER, and
OLIVE S. SPICKLER,
PLAINTIFFS

v.

KEY BANK OF SOUTHERN MAINE,
and JOEL W. STEVENS, and
RICHARD E. LUCAS,
DEFENDANTS

PLAINTIFF ROBERT D. SPICKLER'S MOTION TO AMEND PURSUANT TO RULE 15(b) Me.R.Civ.P.

1. Plaintiff Robert D. Spickler moves the Court to permit the pleadings to be amended to add Count IX to add a claim based on the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C.A. Sec. 1962(a).

2. Although the issue has not been raised by the pleadings the facts expressly put in evidence by the defendants themselves support this claim. [See transcript of Defendant Lucas' testimony attached hereto.]

Signed at Portland, Maine this 15th day of September 1991.

Robert D. Spickler
Plaintiff pro se

HCR 31 - Box 109
Phippsburg, Maine 04562

Tel. 207/389-2464

(The following is an excerpt of the testimony of Richard E. Lucas.)

REDIRECT EXAMINATION

BY MR. SPICKLER:

Q Mr. Lucas, I would like to talk about the escrow agreement. It's a fact, isn't it, that the bank held an escrow deposit?

A Yes, we did.

Q And it's a fact that the bank eventually removed that deposit and applied it to the R. D. Realty loans?

A 3200, 3400.

Q And it's a fact that the bank felt its authority to do it was the guarantee of Chambers Point, Inc. guaranteeing the default of the R. D. Realty Corporation?

A: Um, that the primary reason.

(End of excerpt.)

STATE OF MAINE

CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV 85-245

ROBERT D. SPICKLER, and
OLIVE S. SPICKLER,
PLAINTIFFS

v.

KEY BANK OF SOUTHERN MAINE,
and JOEL W. STEVENS, and
RICHARD E. LUCAS,
DEFENDANTS

COUNT IX
OF THE COMPLAINT

Robert D. Spickler realleges all previous allegations made in the First Amended Complaint included in Count V, and alleges further that:

1. This count is based on Section 1962 (a) of the RICO statute.
2. Certain letters were sent by the defendant to Robert D. Spickler over the period from May 20, 1983 to January 21, 1985 with reference to their conduct as escrow agents,
3. The aforestated letters furthered a scheme to defraud Spickler and/or Chambers Point, Inc. of the funds which were owned by Chambers Point, Inc.
4. This pattern of conduct furthered a scheme by the defendants to defraud the plaintiff out of the funds held in trust for Chambers Point.
5. This dishonest conduct formed a pattern of racketeering activity under 18 U.S.C. Sec. 1961(5).

6. The income that the bank derived from this racketeering aactivity was used to operate its own banking activity in violation of 18 U.S.C. Sec. 1962(a).

Whereas, the defendants have violated the RICO act, and

Whereas, the defendants have unlawfully, acting under guise of contractual rights, committed the separate tort of conversion, the plaintiff was damaged to the extent of at least $150,000 in consequential damages to which he is entitled, and because of the reckless, wanton, malicious disregard for the defendant's violation of the fiduciary trust as depositary of plaintiff's funds as well as its blatant disregard for its civil duty, Plaintiff seeks such punitive damages that the trier of fact deems just.

Signed at Portland, Maine this 18th day of September 1991.

Robert D. Spickler
Plaintiff pro se

HCR 31 - Box 109
Phippsburg, Maine 04562
Tel. 207/389-2464

ISSUES PRESENTED ON APPEAL

1. Did the Court err by permitting the defendants to present an expert witness on the last day of trial?

2. Did the Court err when it did not order a mistrial when it learned of the misconduct of Juror Marsh on the second day of deliberations?

3. Did the Court err on June 30th 1989, when it did not permit Plaintiff Robert D. Spickler to amend the Complaint so that he could assert those claims he obtained, personally, by assignment from R. D. Realty Corporation?

4. Did the Court err when it did not permit Plaintiff Robert D. Spickler to supplement assert those claims he obtained, personally, as the sole shareholder of R. D. Realty Corporation after it was dissolved?

5. Did the Court err when it refused to permit Robert D. Spickler to assert his personal rights in the claim for the mishandling of the sale of Lot #26?

6. Did the Court err when it ordered Plaintiff Robert Spickler to answer the question: "how many lawsuits have you been involved in?"

7. Having permitted the question to Plaintiff Spickler of 'how many lawsuits have you been involved in'; did the Court err in not permitting Spickler to place the counter question to the defendants of how many lawsuits have you had to defend which were brought by your customers?

8. Did the Court err by permitting defendants' counsel to make prejudicial factual statements both on opening and closing which were not supported by the evidence.?

9. Did the Court err, months before the trial when it refused to permit Amendments to the Complaint to include Counts VI, VII and VIII?

10. Did the Court err by not permitting Plaintiffs to supplement the complaint on the claim that the defendant had violated the RICO act?

11. Did the Court err when it would not permit Plaintiff Robert D. Spickler to seek punitive damages after the Jury found unanimously that the bank had converted the escrow funds?

12. Did the Court err when it prevented Plaintiff Robert D. Spickler from proceeding to prove his consequential damages due to the bank's violation of the escrow trust?

13. Did the Court err when it erroneously instructed the Jury that Lot #26 had a mortgage ahead of the bank's first mortgage and then, when informed of its error , refused to tell the Jury that there was no mortgage superior to the bank's?

14. Did the Court err when it denied Plaintiff's MOTION TO DISMISS THE COUNTERCLAIM, OR ALTERNATELY, TO PRESENT THE COUNTERCLAIM TO THE JURY FOR ITS RESOLUTION?

15. Did the Court err when it submitted Verdict form "Count I" and failed to ask the question as to whether the parties contracted orally to hold a public auction?

16. Did the Court err when it submitted the Verdict Form "Count I" and failed to include the question whether or not the bank sold Lot #26 in a commercially reasonable manner?

17. Did the Court err when it submitted the verdict form "Count II" and failed to include the question of whether or not the bank disposed of the Dube Judgment in a commercially reasonable manner?

18. Did the Court err when it inferred that it had decided a Jury Question by Question #1 in Verdict Form for "Count III"?

19. Did the Court err when it refused to instruct the Jury reasonably in accordance with Plaintiffs' Jury Instruction #4?

20. Did the Court err when it refused to instruct the Jury reasonably in accordance with Plaintiffs' Jury Instruction #5?

21. Did the Court err when it refused to instruct the Jury reasonably in accordance with Plaintiffs' Jury Instruction #6?

22. Did the Court err when it refused to instruct the Jury reasonably in accordance with Plaintiffs' Jury Instruction #7?

23. Did the Court err when it refused to instruct the Jury reasonably in accordance with Plaintiffs' Jury Instruction #8?

24. Did the Court err when it refused to instruct the Jury reasonably in accordance with Plaintiffs' Jury Instruction #9?

25. Did the Court err when it refused to instruct the Jury reasonably in accordance with Plaintiffs' Jury Instruction #13

26. Did the Court err when it refused to instruct the Jury reasonably in accordance with Plaintiffs' Jury Instruction #14?

27. Did the Court err when it refused to instruct the Jury reasonably in accordance with Plaintiffs' Jury Instruction #15?

28. Did the Court err when it refused to permit the testimony of Lucas and Sbrega as to admissions made by Lucas that he had, in fact, promised to hold an auction to dispose of the real estate on Parker Head as part of the May 20th, 1983 agreement?

29. Did the Court err when it barred the plaintiff from making inference pursuant to Rule 513 for Defendants' raising privilege in refusing to answer an interrogatory propounded previously in the proceedings?

30. Did the Court abuse its discretion when it decided as fact that the bank's counterclaim was for a specific amount and was to be considered and applied to offset any damages given by the Jury to the plaintiffs?

31. Did the Court err when it refused to disqualify jurors who were, or had been customers, or otherwise carried on business with the defendant bank?

32. Did the Court abuse its discsretion when it instructed the jury that they could not award damages on both the contract liability and the

tort liability for the misappropriation of the escrow account.

33. Were the Court's instructions and verdict forms inadequate to avoid confusing the Jury on the issue of the public auction and the counterclaim?

34. Was it an abuse of discretion not to admit the deposition of John G. Marshall, Esq. (deceased)?

35. Did the Court err when it fasiled to sanction Defendants' attorney, havaing been made aware the attorney physically interfered with a conference that Spickler was holding with his witness, David R. Morrill?

36. Did the Court err throughout the history of this case by regularly opening up discovery upon Defendants' continuing requests over objections of the plaintiffs that discovery deadline had passed by previous court orders including the PreTrial Order?

37. Did the Court err when it denied Plaintiff's Motion for Sanctions for Defendants' attorney's failure to show up to depose Robert D. Spickler who did show up at the attorney's office in response to a subpoena to be deposed?

A

38. Did the Court abuse its discretion when it placed a permanent injunction on the plaintiffs which restricted their future free access to the Courts?

STATE OF MAINE

ON APPEAL
From the Superior Court
Cumberland, ss.

SUPREME JUDICIAL COURT
Sitting as the Law Court
Law Docket No. CUM-92-44

ROBERT D. SPICKLER, and
OLIVE S. SPICKLER,
Plaintiffs, Appellants
Cross Appellees

v.

KEY BANK OF SOUTHERN MAINE
and
RICHARD E. LUCAS,
Defendants, Appellees
Cross Appellants

MOTION FOR RECONSIDERATION AND AMENDMENT OF THE DECISION DATED DECEMBER 18TH, 1992

Pursuant to Rule 76 A(b), Plaintiff Appellant Robert D. Spickler moves the honorable Supreme Judicial Court to reconsider its Decision dated December 18, 1992 and, in the interest of justice to amend it in view of the argument presented in this brief.

The Court has overlooked two questions of federal law while arriving at its Decision which makes no specific reference to those two questions, both of which were presented to the trial court and both were decided by the trial court and both were presented to this Court on appeal.

QUESTION NUMBER I

WAS PLAINTIFF ROBERT D. SPICKLER DENIED THE PROTECTION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION WHEN HE WAS DEPRIVED OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW?

PERTINENT FACTS:

Robert D. Spickler, in accordance with the letter of agreement dated May 20th, 1983, assigned all of his personal rights to the home that was in construction on Lot 26 in Parker Head Neck to the defendant bank in settlement of his obligations to the bank.

Robert asserted these rights to the Court below beginning June 30th, 1989 over two years before the trial. [See Motion to Amend the Complaint, [APP. Vol. I-106 - 7 as well as Vol. II-346 - 348] and Motion to Amend dated 2nd day of March 1991 [APP. Vol. I- 180 - 183].]

The Court below, nevertheless, ruled that Robert Spickler shared no rights with his wife in any claims in Lot #26 and denied Robert's various attempts to amend the complaint to include those rights.

During the trial, which began on September 9th, 1991, the Court specifically ordered Robert not to present any of the claims pertaining to Lot #26 to the jury, ruling that those claims were reserved only to Olive Spickler who held the deed on Lot #26.[1]

---

[1]This Court appears to have agreed with the lower court in the conclusion in its Decision on Page 3 where it states factually:

> COUNT II (Lot 26 claim) [was] brought by Olive Spickler alone . . . [Emphasis added]

After finding for the defendant on the Lot #26 against Olive and Robert Spickler, the trial Court then awarded costs to the defendants in the amount of $3,916.29 against Robert Spickler, as well as Olive Spickler.

CONCLUSION

The trial court, while finding that Robert Spickler had no standing to sue concerning the Lot #26 claims, proceeded to violate his rights under the Fourteenth Amendment to deprive him of his property without due process of law by ordering him to pay defendants' costs on the judgment which they obtained on Olive's claim on Lot #26.[2]

The foregoing was raised on appeal to this Court. (See Pg. 71 of Appellants' Reply Brief).

---

[2]Under similar reasoning, the trial court made further error by awarding judgment on Robert Spickler's claim on Count III (the Escrow Account) to both Robert and Olive Spickler. Olive Spickler made no such claim in the pleadings, or otherwise, and this Court agreed in the Decision of December 18th, that the Escrow Claim was solely Robert Spickler's, who was the sole assignee of Chambers Point, Inc.

(See Page 3 of the Decision where this Court finds that the . . . "first supplemental complaint that permitted Spickler to assert the claims assigned to him by Chambers Point" . . .) [Emphasis added]

If the judgments are permitted to stand as they are, Robert Spickler's claims are sometimes separated from his wife's claims and sometimes his claims also include his wife's interest, depending on when the situation prejudices him. How can such injustices be permitted by this honorable Court?

QUESTION NUMBER II

WHETHER PLAINTIFF ROBERT D. SPICKLER WAS DENIED HIS RIGHTS UNDER THE FEDERAL STATUTE 18 U.S.C. Sec. 1962(a) WHEN THE TRIAL COURT DENIED HIS MOTION TO AMEND THE COMPLAINT TO INCLUDE THE RICO CLAIM.

PERTINENT FACTS:

Under the terms of an escrow agreement, dated October 12, 1978, certain funds of Chambers Point, Inc. were placed in escrow with the defendant bank on behalf of a number of real estate purchasers pending completion by Chambers Point of roads and powerlines.

In 1988, Chambers Point assigned their rights to these funds to Robert D. Spickler, individually. During the trial, Defendant Lucas, on behalf of the defendant bank testified that the bank, under the rubric of a purported guarantee by Chambers Point, Inc. took the funds and applied them to the unpaid debt of R. D. Realty Corporation.

Spickler,forthwith, relying on the statute 18 U.S.C. Sec. 1962(a), as well as the doctrine of Masi v. Ford City Bank and Trust Co., 779 F.2d 397, 401 - 402 (7th Cir. 1985), moved the trial court to permit amendment of the pleading to include a claim under the aforesaid RICO act. [APP. Vol II - 359 - 363]

The pattern of racketeering activity was entered in evidence. The trial court took jurisdiction and forthwith, without further comment, denied Plaintiff's motion to amend the pleadings.

All of the above facts were briefed on appeal to this Court. [See Pages 27 - 31 of Reply Brief.]

Please note that the jury found, in effect, that the bank had unlawfully taken the escrow funds in collection of the alleged debt.

CONCLUSION

In that 18 U.S.C. states, in relevant part that:

> It shall be unlawful for any person who has received any income derived . . . . through collection of an unlawful debt in which such person has participated as a principal within the meaning of Section 2 Title 18 United States Code to use or invest directly or indirectly any part of such income in . . . . the operation of any enterprise which is engaged in, or the activities of which effect, interstate or foreign commerce.
>
> [Emphasis added]

and, in that Key Bank deals outside of the State of Maine with various customers and with its parent located in New York State, as well as the Federal Reserve Bank, they carry on activities which effect interstate commerce.

Robert Spickler was, as the Court recognized, the assignee of Chambers Point escrow funds. He was the victim of the defendants' unlawful collection of the debt and, as such, was deprived of the protection available under Section 1982 when he was not permitted to pursue the remedies rightfully his

under the statute.[3]

WHEREFORE, the honorable Supreme Judicial Court is asked to address this error on the part of the trial Court when it denied Robert Spickler his lawful right to invoke the protection of Federal Law, and order that the matter be remanded to the Superior Court for further proceedings on the issue.

Respectfully submitted this 4th day of January 1993.

/s/_____

Robert D. Spickler
Plaintiff pro se

---

[3]This statute was invoked by Mr. Masi in Masi v. Ford City Bank when Ford City committed the same unlawful act under the same circumstances.

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Supreme Court, U.S.
FILED
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No. 92-1830

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1992

ROBERT D. SPICKLER,

Petitioner,

v.

KEY BANK OF SOUTHERN MAINE
and
RICHARD LUCAS,

Respondents.

On Petition for a Writ of Certiorari
to the Supreme Judicial Court
of the State of Maine

RESPONDENTS' BRIEF IN OPPOSITION

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LIST OF PARTIES
(SUPREME COURT RULE 29.1)

Pursuant to Supreme Court Rule 29.1, the following is a list of all parent companies and subsidiaries (except wholly-owned subsidiaries) of Respondent Key Bank of Southern Maine, now known as Key Bank of Maine:

KeyCorp

- Banking Subsidiaries
  - Key Bank of Alaska
  - Key Bank of Idaho
  - **Key Bank of Maine**
  - Key Bank of New York
  - Key Bank of Oregon
  - Key Bank of Washington
  - Key Bank of USA N.A.
  - Key Bank of Utah
  - Key Bank of Wyoming

- Financial Service Subsidiaries
  - Key Bank Life Insurance, Ltd.
  - Key Brokerage Company, Inc.
  - Key Corp Mortgage, Inc.
  - Key Pacific Mortgage, Inc.
  - Key Services Corporation
  - Trust & Investment Management Group
  - Key Trust Company
  - Key Trust Company of Alaska
  - Key Trust Company of Florida, N.A.
  - Key Trust Company of Maine
  - Key Trust Company of the Northwest

Key Trust Company of the West
Key Corp Leasing Ltd.
NCB Properties Inc.
Niagara Asset Corporation
Niagara Portfolio Management Corp.

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No. 92-1830

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and
RICHARD LUCAS,

Respondents.

On Petition for a Writ of Certiorari
to the Supreme Judicial Court
of the State of Maine

RESPONDENTS' BRIEF IN OPPOSITION

The respondents Key Bank of Southern Maine and Richard Lucas respectfully request that this Court deny the petition for writ of certiorari, seeking review of the Supreme Judicial Court of the State of Maine's opinion in this case.

That opinion is reported at 618 A.2d 204 (Me. 1992). The petition is frivolous because it presents no federal or constitutional issues.

JURISDICTION

Jurisdiction is erroneously invoked by petitioner under 28 U.S.C. § 1254(1) (conferring jurisdiction of cases in the courts of appeals). The Court lacks jurisdiction under 28 U.S.C. § 1257(a) because no federal question was raised below.

STATEMENT OF THE CASE

The respondents to a petition for certiorari are enjoined in Supreme Court Rule 15.1 to "address any perceived misstatements of fact or law set forth in the petition which have a bearing on the question of what issues would properly be before the Court if certiorari were granted." Here, the petition's statement of the case and statement of facts material to the five issues presented are replete with inaccuracies. It would take up too much space, as well as waste the Court's time, to point out all of the errors in petitioner's statement of fact. Respondents will therefore only point out the most egregious inaccuracies as they relate to each specific issue before the legal discussion of that issue below.

Respondents believe that the underlying facts are sufficiently and accurately summarized in the Decision of the Maine Supreme Judicial Court. *See* Appendix to Petition for Certiorari (C. App.) at 2-4. Respondents therefore incorporate

by reference the statement of facts and adopt the same as their Statement of the Case.

REASONS WHY THE PETITION SHOULD BE DENIED

I. THE COURT LACKS JURISDICTION BECAUSE THE PETITION FAILS TO RAISE A FEDERAL QUESTION.

A final judgment or decree rendered by the highest court of a State may be reviewed by this Court by writ of certiorari "where any title, right, privilege or immunity *is specially set up or claimed* under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States." 28 U.S.C. § 1257(a) (emphasis added). For there to be jurisdiction in the Supreme Court, it must affirmatively appear from the record that a federal question was raised in the state court. There should be no doubt from the record that the federal claim was presented in the state court and that the state court was apprised of the nature or substance of the federal claim. *Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71 (1988). This Court has stated that:

> it is a long-settled rule that the jurisdiction of this Court to re-examine the final judgment of a state court can arise only if the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system.

Webb v. Webb, 451 U.S. 493, 496 (1981).

Raising a federal question for the first time in a petition for rehearing addressed to the highest state court is generally insufficient. *Radio Station WOW v. Johnson*, 326 U.S. 120, 128 (1945); *Bloeth v. State of N.Y.*, 82 S. Ct. 661, 7 L. Ed. 2d 780 (1962). Similarly, it is too late to raise a federal question for the first time in the notice of appeal to the Supreme Court or in the jurisdictional statement. *White River Lumber Co. v. Arkansas ex rel. Applegate*, 279 U.S. 692, 700 (1929).

When the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in state courts, unless the aggrieved party in the Supreme Court can affirmatively show the contrary. *Street v. New York*, 394 U.S. 576 (1969).

The requirement that a federal question be raised in state court is also embodied in Supreme Court Rule 14.1(h), which requires that a petitioner seeking review of a judgment of a state court state the basis for jurisdiction in his or her statement of the case, which must specify

> the stage in the proceedings, both in the court of first instance and in the appellate courts, at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by those courts; and such pertinent quotation of specific portions of the record or summary thereof . . . as will show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on a writ of certiorari.

The Petitioner has not complied with Rule 14.1(h) because he has failed to advise this Court when and in what manner the federal questions upon which he seeks review were raised. *See Webb v. Webb*, 451 U.S. at 495. The reason for this omission is obvious: no federal question was raised in the state courts.

A. Question I: Costs Levied Against Mr. Spickler.

Petitioner asserts that he was deprived of his property without due process because the Maine Superior Court levied costs against him on a count of the complaint relating solely to his wife. This question was first raised in a Motion for Reconsideration and Amendment of the Maine Supreme Judicial Court Decision. C. App. at 45. In that motion, petitioner alleged that the Maine Supreme Judicial Court did not decide whether petitioner was denied due process guaranteed by the Fourteenth Amendment to the United States Constitution. *Id.* Petitioner incorrectly asserts that this issue was presented to and decided by the trial court. *Id.* This due process issue was never raised either in the trial court or on appeal to the Maine Supreme Judicial Court. Thus, the Court did not overlook any point of law or fact that had been presented to it, and reconsideration was therefore not available under Maine law. Me. R. Civ. P. 76A(b)(1). The issue was raised for the first time in the motion for reconsideration, and that is too late. *White River Lumber v. Arkansas ex rel. Applegate.*

B. Question II: The RICO Claim.

Petitioner asserts that he was somehow deprived of his federal or constitutional rights because his motion to amend his complaint on the sixth day of trial to add a RICO count was denied.[1] This denial does not raise a federal question.

A denial of a motion to amend a pleading during trial is within the discretion of the trial court and not subject to review by the Supreme Court. *Nevada-California-Oregon R. Co. v. Burrus*, 244 U.S. 103 (1917). Likewise, a decision of a question of local pleading and practice is not open to review in the Supreme Court. *Washington v. Miller*, 235 U.S. 422 (1914). The motion to amend to add a RICO claim is clearly a matter properly governed by local pleading and practice rules. The denial of the motion is not the denial of a federal right, and this Court therefore lacks jurisdiction over the issue.

Petitioner's argument that the decision of the Maine Supreme Judicial Court is in conflict with a decision of a United States Court of Appeals is also incorrect. The Maine Supreme Judicial Court merely affirmed the denial of a motion to amend on grounds of untimeliness. The merits of the RICO claim were not at issue. The Seventh Circuit Court of Appeals cases cited by petitioner, *Masi v. Ford City Bank and Trust Co.*, 779 F.2d 397 (7th Cir. 1985) and *Haroco v. American Nat'l Bank and Trust Co. of Chicago*, 747 F.2d 384 (7th Cir. 1984), *aff'd*, 473 U.S. 606 (1985), addressed whether a cause of action had been stated under RICO -- a question different

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[1]There is no support for Mr. Spickler's statement that "[t]here is compelling evidence that the handwritten documents were composed by Mr. Lucas after this lawsuit was initiated." Petition for Certiorari (Ptn.) at 15.

from whether petitioner should be allowed to amend his complaint to add a RICO claim on the sixth day of trial. There is therefore no conflict between the Seventh Circuit decisions and the Maine Supreme Judicial Court opinion.

C. Question III: The R.D. Realty Claim.

The third question raised by petitioner is whether he was denied due process when the court ruled that the claims of R.D. Realty, one of Mr. Spickler's corporations, could only be brought through a licensed attorney because they were claims of a corporation. Petitioner did not raise this due process argument either in the trial court or on appeal. This Court therefore is without jurisdiction to address this argument. Moreover, the ruling that R.D. Realty's claims must be brought through an attorney arose from petitioner's own motion to join R.D. Realty as a necessary party which was granted by order of March 15, 1991. The Superior Court granted the motion to add R.D. Realty as a necessary party "on the condition that a Maine lawyer appears and represents the interests of the corporation. Otherwise, it will be denied." No Maine lawyer ever entered his or her appearance for R.D. Realty. Moreover, the ruling on that motion, C. App. at 14-16, was based on local practice and procedure, and as such, is not subject to review by this Court. *See Washington v. Miller*, 235 U.S. 422 (1914).

The record reflects that petitioner was given a full opportunity to assert R.D. Realty's claims. C. App. at 14-15. This question was not properly raised and is in any event frivolous.

D. Question IV: The Injunction.

The fourth question raised by petitioner is whether enjoining him from filing lawsuits against the bank and its representatives without first obtaining the permission of a state court denied him equal treatment under the law. It is relevant to this issue that the evidence before the Superior Court on the motion for injunction established that Mr. Spickler was a prolific *pro se* litigator and that similar injunctions had already been entered against him in both federal and state courts. *See* Appendix to Brief in Opposition.

The issue whether the injunction denied petitioner equal treatment was not adequately raised in either the trial or appellate court. On appeal, Petitioner stated only that the injunction was "wrong because it . . . infringed on Appellants' constitutional right to equal treatment under the law, including the law that governs court process." Brief of Appellants at 141. Even in his Petition for Certiorari, petitioner does not cite any federal constitutional right that was allegedly violated, but refers only obliquely and generally to "the guarantee of equal treatment under the law" and "the Fourteenth Amendment." Ptn. at 28.

In order for such a constitutional claim to be raised, it must appear that some provision of the *federal*, as distinguished from the state, constitution was relied upon by the petitioner below, and the provision must be set forth. *Bankers Life & Cas. Co. v. Crenshaw*, 86 U.S. 71 (1988); *New York Central & H.R. Co. v. New York*, 186 U.S. 269, 273 (1902). If a claim is made that a state statute is "unconstitutional" or that it denies "constitutional rights," it will be assumed that reference is being made to the state

constitution and rights thereunder rather than to the federal Constitution. *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67-68 (1928). Thus, a claim that "due process" has been violated is deemed to relate to a state due process clause. *Bowe v. Scott*, 233 U.S. 658, 664-65 (1914). Similarly, use of the phrase "full faith and credit" in state court proceedings without citation to the Federal Constitution or to any cases relying on the Full Faith and Credit Clause of the Federal Constitution is insufficient to preserve a federal issue. *Webb v. Webb*, 451 U.S. at 496. Petitioner's reference to his "constitutional right to equal treatment under the law" in state court is therefore insufficient to raise a federal question subject to this Court's review.

As the Maine Supreme Judicial Court noted in its decision, the Superior Court judicially noticed a number of lawsuits involving the Spicklers and their corporations. C. App. at 8. The Court further noted that "there is ample evidence in the record to support the trial court's factual determinations [in support of the injunction]." *Id.* Petitioner's present attempt to reargue the facts on which the injunction was based should be ignored.[2]

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[2]Many of Mr. Spickler's assertions in support of this argument are baseless. For example, his claim that he prevailed in this lawsuit is belied by the record. C. App. at 2-9. His assertion that the trial justice said that he held a "grudge" against him is false; the justice said only that he had a "grudging respect" for Spickler. Finally, there is no record basis for the three statements found on page 22 of the petition suggesting some sort of conspiracy by respondents, their counsel, and the Maine judiciary.

E. Question V: The General Due Process Claim.

Petitioner's claim that the Maine Courts were "in violation of 42 U.S.C. § 1983 by unlawfully disposing of [his] civil rights to due process under the color of state law", Ptn. at 23, was not raised on appeal or at any other stage of the state court proceedings, and is wholly unsupported by the record. If anything, the record reveals that the trial court bent over backwards to protect and help the Spicklers.

Petitioner's statement of fact in support of this issue is vague, inaccurate, and misleading. While it is true that petitioner raised 38 errors on appeal to the Maine Supreme Judicial Court, only seven were deemed worthy of discussion, and none can be reasonably construed as claiming "unequal treatment" by the trial judge. *See* C. App. at 38-44. The "unequal treatment" claim was not adequately raised in state court, and this Court therefore is without jurisdiction over the claim.[3] *Webb v. Webb*.

---

[3]Mr. Spickler's unlikely claim that he was "physically shoved around by defendants' counsel", Ptn. at 23, during trial (which respondents absolutely deny) and that this behavior was sanctioned by the trial justice, even if true, presents no federal or constitutional issue for this Court's review. The Law Court correctly found that the trial court was "well within its discretion" in its handling of the alleged incident. C. App. at 7. The decision involved the Superior Court justice's control of the trial and was therefore based on adequate and independent state procedural grounds.

II. THE PETITIONER'S CLAIMS ARE INSUBSTANTIAL AND FRIVOLOUS.

The foregoing review of the petitioner's claims in this Court establishes that, even if the federal questions raised by petitioner had been properly raised in state court for purposes of this Court's jurisdiction, they are plainly unsubstantial and frivolous. *See Palmer Oil Corp. v. Amerada Petroleum Corp.*, 343 U.S. 390 (1952). Accordingly, the writ should be denied.

III. THERE IS NO SPECIAL AND IMPORTANT REASON FOR A WRIT OF CERTIORARI.

The Supreme Court will not grant certiorari to review evidence and discuss specific facts. *United States v. Johnston*, 268 U.S. 220, 227 (1925). There must be special and important reasons for granting certiorari. Supreme Court Rule 10.1; *Rice v. Sioux City Cemetery*, 349 U.S. 70, 74 (1955). The issues must be important to the public, not just to the particular parties involved. *Rice v. Sioux City Cemetery* at 74.

It is readily apparent from the Petition that the decision of the Maine Supreme Judicial Court turned on the unique and extraordinary facts of this case. The decision will affect few except the parties. As is clear from a review of the 38 issues raised on appeal to the Maine Supreme Judicial Court, see C. App. at 38-44, the questions raised relate primarily to the conduct of the trial, evidentiary rulings, jury instructions, and pleading matters. As argued above, these are issues appropriately left to state court determination.

IV. THERE ARE ADEQUATE AND INDEPENDENT STATE GROUNDS TO SUPPORT THE DECISION.

The Supreme Court will not review a state court decision which is based on state law that is both adequate and independent. *Illinois v. Rodriguez*, 497 U.S. 177 (1990); *Fox Film Corp. v. Muller*, 296 U.S. 207 (1935). As the Supreme Judicial Court's opinion reflects, there are independent and adequate state grounds supporting the decision of the Law Court on each issue raised by petitioner.

CONCLUSION

For the reasons set out herein, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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June 14, 1993

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APPENDIX A

STATE OF MAINE
CUMBERLAND, SS

SUPERIOR COURT
Civil Action
Docket No. CV-86-626
CV-86-967

ROBERT D. SPICKLER and
OLIVE S. SPICKLER,

Plaintiffs,

v.

ALAN J. LEVENSON, et al.,

Defendants.

ORDER AND DECISION

Defendants Alan Levenson and Alan Levenson as executor of the estate of Mayo Levenson and defendant Robert Dube have filed motions for summary judgment in their favor on the complaint of Robert Spickler and Olive Spickler and on the counterclaim in this case concerning alleged perjury at the 1982 trial in *R.D. Realty v. Dube*, (Androscoggin County CV-76-301). The defendants argue that the plaintiffs' claims, even if brought as shareholders of the closely held corporation R.D. Realty, are barred because of decisions in two lawsuits in the United States District Court for the District of Maine.

The underlying dispute concerns a land transaction between R.D. Realty Corporation and Roger Dube concerning

valuable real estate at Parker Head in Phippsburg. At the trial on September 2, 1974 a letter was introduced, without objection, which indicated that Dube had warned Robert Spickler, as president of R.D. Realty, that payment was due and foreclosure was possible. The jury, for whatever reason, found for Dube and against R.D. Realty. A request for a new trial was denied and that decision upheld. *See Spickler v. Dube*, 463 A.2d 739 (Me. 1983).

Actions were brought in the United States District Court alleging that the letter was fraudulently produced as a result of a joint effort between Dube and the Levensons, his attorneys, and that as a result of perjured testimony, the jury reached the wrong verdict.

The central suit, *Spickler v. Dube, et al.*, 84-0059P, resulted eventually in a dismissal for want of prosecution. That dismissal was upheld by the First Circuit Court of Appeals on June 22, 1988. Also see the dismissal of the claims of Olive spickler in *Spickler v. Levenson*, CV-86-0101P and the affirmation of the dismissal by the First Circuit on January 18, 1989.

As the decision in the federal suits has been affirmed and are either a dismissal with prejudice or a judgment for the defendants, the defendants argue that the current claims, from the same transaction, cannot be maintained in the Superior Court. I agree. *See Beegan v. Schmidt*, 451 A.2d 642, 644 (Me. 1982).

The fact that this action was brought as a shareholder derivative action makes no difference given the close

connection between the Spicklers, as majority stockholders and officers of R.D. Realty, and R.D. Realty.

The final issue is whether an injunction should issue against further litigation surrounding the Parker Head property. Unfortunately such an injunction must issue given the never ending litigation and great cost. The transactions involving R.D. Realty and Dube took place a long time ago and must be finally put to rest.

Wherefore the entries shall be:

1. Defendants' motions for summary judgment of February, 1989 are GRANTED.

2. Defendant Roger P. Dube's motion for summary judgment of March 7, 1989 is GRANTED.

3. Judgment for the defendants on the amended complaint.

4. Plaintiffs Robert and Olive Spickler, R.D. Realty Corp., their agents or persons acting in concent [*sic*] with them, are hereby enjoined permanently from filing any complaint in any Maine Court relating to the transactions involving the Dube/R.D. Realty mortgages on the so-called Parker Head Land, *R.D. Realty Corp. v. Roger Dube*, CV-76-301, the Federal Court lawsuits *Robert Spickler v. Roger Dube, et al.*, 84-0059P and *Olive Spickler v. Alan Levenson*, 86-1010P, these consolidate [*sic*]

actions 86-626 and 86-967 and *Robert Spickler v. Alan Levenson*, 86-641, including, but not limited to, lawsuits accusing Roger P. Dube, Alan J. Levenson (individually or as administrator), agents of a party (including attorneys, law offices or employees of law offices), judges or witnesses in this or any of the aforementioned proceedings, of perjury, fraud or falsifying evidence, unless the plaintiffs, before they file any further action, satisfy a justice of this court that the action they seek to file presents at least a *prima facie* case.

5. This Order and Decision may be incorporated by reference on the docket.

DATED: June 1, 1989

/s/ Paul A. Fritzsche
PAUL A. FRITZSCHE
Justice, Superior Court

APPENDIX B

[NOT FOR PUBLICATION]

UNITED STATES COURT OF APPEALS
For the First Circuit

No. 87-1833 ROBERT D. SPICKLER,
Plaintiff, Appellant,
v.
ROGER P. DUBE, *et al.*,
Defendants, Appellees.

No. 87-1962 ROBERT D. SPICKLER,
Plaintiff, Appellant,
v.
ROGER P. DUBE,
Defendant, Appellee.

No. 87-1963 ROBERT D. SPICKLER,
Plaintiff, Appellant,
v.
ROGER P. DUBE, *et al.*,
Defendants, Appellees.

ALAN J. LEVENSON, *etc.*,
Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE

[Hon. A. David Mazzone*, *U.S. District Judge*]

Before
Campbell, *Chief Judge*,
Breyer and Selya, *Circuit Judges*.

Robert D. Spickler on brief *pro se*.

Daniel F. Gilligan, Harrison L. Richardson and Richardson & Troubh on brief for *appellees*.

June 22, 1988

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*Of the District of Massachusetts, sitting by designation.

[Excerpt]

PERMANENT INJUNCTION

Spickler also challenges the court's grant of defendants' motion to enjoin him from filing any further lawsuits in federal district court involving the transaction in issue without certification by a district court judge that he has presented a *prima facie* case. It is well settled that a court may issue injunctions where the plaintiff has subjected a defendant to baseless, vexatious and repetitive suits. *Gordon v. United States Department of Justice*, 558 F.2d 618 (1st Cir. 1977); *Clinton v. United States*, 297 F.2d 889 (9th Cir. 1961).

In the instant case, the court found that these defendants have been hauled into court by appellant on various occasions to defend against what is essentially the same claim and that this action was brought in bad faith and for the purpose of harassing the defendants. In light of the history of litigation between the parties, we see no reason to disagree with these findings. We do not believe that defendants must be subjected to an endless number of repetitive lawsuits. Each time a plaintiff brings a frivolous or repetitive lawsuit, defendants are injured by having to bear the cost of defending themselves. The district court properly exercised its powers to prevent abuse of the litigation process.

We note that the district court did not bar appellant from suing these defendants on a meritorious claim; rather it devised a screening process which will protect the defendants from having to defend against baseless claims.

Supreme Court, U.S.
FILED
JUN 24 1993
OFFICE OF THE CLERK

NO. 92-1830

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1992

ROBERT D. SPICKLER,
Petitioner

v.

KEY BANK OF SOUTHERN MAINE, and
RICHARD LUCAS,
Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT
OF THE STATE OF MAINE

REPLY BRIEF

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UNITED STATES CONSTITUTION

FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION

> ". . . nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTES

18 U.S.C. Sec. 1962(a)

18 U.S.C. Sec. 1964(c)

42 U.S.C. Sec. 1983
Deprivation of Civil Rights
"under color of state law"

PETITIONER'S REPLY BRIEF

> Petitioner paid what he owed to his country in June 1944 when he led his unit ashore on Omaha Beach and, ultimately, on to the Elbe. Now, he asks that his country do what it surely owes him; protection of his rights before any court in the United States.

PRELIMINARY COMMENT

Respondents' Brief is unsigned and should be refused by the Court.

If the Court accepts the unsigned brief, Petitioner requests that the Court direct its attention to the habit of the Respondents, through their counsel, to make substantive false statements of fact without following up with any evidence to support those facts. This habit is prevalent throughout their brief and Petitioner will point them out in detail, with proof, in his arguments in reply to the enumerated questions in every instance they arise.

As a good example of this tactic, the Respondents, right off the bat, tell this Court in their STATEMENT OF THE CASE (Page 2):

> ". . . . the petitioner's statement of the case and statements of facts material to the five issues presented are replete with inaccuracies."

Then, they state it would take too much space, and be a waste of the Court's time to point out all of those errors.

But, why not point out just one of those "inaccuracies"? That would not take much of the space, nor the Court's time, would it?[1]

Before ending this Preliminary Comment, it is important to address Respondents' choice not to make a statement of the case but, instead, to incorporate, by reference, the statement of facts given by the Maine Supreme Judicial Court in their Decision which is the subjct of this Petition. In doing so they say that the facts are:

"Accurately summarized" in that decision.

The facts are not accurately summarized in that Decision for, if they were, the Maine Court would have recognized the wrongs that were heaped upon Spickler in the trial court and would have made this Petition unnecessary.

There is, of course, insufficient spare time for the Petitioner to point out, in detail, all of the errors in that Decision, but, here is one example:

On Page A-3 of the Petition, the Maine Supreme Court Decision states, with reference to the Roque Bluffs Subdivision of Chambers Point, Inc.,:

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[1]This tactic of arguing with false facts was successfully used in their ninety-seven page Brief to the Maine Supreme Judicial Court, against which Petitioner submitted a seventy-six page (fully documented) Reply Brief, as well as a 146 page (fully documented) Brief. The Maine Court, nevertheless, ruled in the bank's favor and this honorable United States Supreme Court will never know the truth about this case if doesn't decide to review it.

"Immediately after the auction, the neighbor(s) successfully sued claiming that there was no right of access over the land."

This statement is misleading and is not a true representation of the outcome of that litigation which was accurately stated in Spickler's appeal papers, which papers, Petitioner believes, the Maine Supreme Court never read, nor cared to read.

The following quotation is from the Reply Brief of Spickler presented to the Maine Supreme Judicial Court which addressed the true facts:

"They (the Appellees) then state that the Roque Bluffs (Chambers Point) development, as well as the R. D. Realty development failed (as "large schemes") because the Spicklers, "through bad planning and timing" "got in over their heads". On the contrary, the record of this case shows that the Chambers Point development was hampered by a frivolous claim of one of the four property owners which caused the Superior Court of Washington County to issue what turned out to be an unwarranted injunction against the use of a valid right-of-way."

At this point Footnote #1 reads:

"This injunction was ultimately abandoned by Gibbs, who finally agreed with Spickler that Chambers Point did indeed have a right-of-way over their property from the beginning of the dispute, and formally granted the easement."

The Spickler Reply Brief then goes on:

"The appellees also wrongfully claim that the neighboring landowner(s) embroiled the Spicklers in litigation concerning the right-of-way when the

record clearly shows that there were four landowners, including Gibbs, who owned the land over which the right-of-way traveled. Three of these four owners agreed immediately with Spickler that he had a right-of -way and it was only Mrs. Gibbs who sought to rip off the Spicklers when she brought the aforestated frivolous action." "To try to mislead the Law Court into believing that all of the neighbors sued him is, if not dishonest, a continuation of disingenuity."

"It is a furtherance of their disingenuity when the appellees state that Spickler lost to Gibbs in 1984 without clearly revealing to the Court in the same sentence that Gibbs abandoned that victory over Spickler by finally settling with him on Spickler's original terms. This conduct is clearly in violation of Me.R.Civ.P. 11 and 3.7(e) (1) (i) of the Maine Bar Rules."

"It is clear dishonesty by acts of omission. What they are saying to the Court is analogous to saying: "We didn't lie when we said we didn't smoke dope, because when we smoked it, we didn't inhale."

[End of Quotation]

I. **REPLY TO RESPONDENTS' WRONGFUL STATEMENT THAT THIS COURT LACKS JURISDICITON BECAUSE PETITION FAILED TO RAISE A FEDERAL QUESTION.**

Respondents, in support of this contention argue that Petitioner failed to satisfy the requirement of Rule 14.1(h) in that:

> . . . . "he has failed to advise this Court in what manner the federal questions on which he seeks review were raised."

Rule 14.1(h) requires that the statement of the case shall specify the stage in the proceedings, both in the court of first instance and in the appellate courts at which the federal questions sought to be reviewed were raised, the method or manner of raising them and the way in which they were passed upon by those courts.

The Court has stated that the jurisdiction of this court can arise if the record as a whole shows, either expressly, or by clear implication that the federal claim was adequately presented in the state system. Webb v. Webb, 451 U.S. 493, 496 (1981)

Question I was shown by Petitioner's Statement of the Case to be adequately presented in the state system.

On Page 7 of the Petition, the Statement of the Case clearly shows that, at the trial level, Spickler, both orally and in writing, pressed for his rights to be asserted, and, it clearly shows that it resulted in an order from Judge Brennan that he must cease referring to anything pertaining to Lot #26:

> (made it clear) "that the claim for Lot #26 was Olive Spickler's alone."

From that point forward, in the trial court, Spickler could have been held in contempt of Judge Brennan's Order if he continued to raise anything pertaining to Lot #26 in defiance of the order.

On Pages 10 and 11 of the Petition, it was shown that Robert Spickler, beginning at least three

years before the trial, was blocked continually by th court from joining his wife, and references to the record were made.

All of the aforestated, as the Statement reveals, were presented on the Appeal to the State of Maine Supreme Judicial Court and were documented in two briefs and the Appendix to those Briefs, and again, for the third time, on a Motion for Reconsideration, (Pages 11 and 13 of Petitioner's statement of the Case).

These instances in the State Courts concerning the raising of Question I, satisfy this Court's requirement of at least showing a clear implication that the federal question arose in the lower as well as the state appellate court.[2]

As to Question II, as it was shown with reference to Question I, the Petitioner's statement of the case shows how the federal question was raised in the trial court and the state appellate court at Pages 13, 14, and 15.

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[2]Petitioner Robert Spickler's Briefs on Appeal to the Maine Supreme Judicial Court consist of over two hundred pages which, in minute detail, with references to the record in the trial court, supported by an appendix so extensive it consists of six volumes, supports every statement of fact that Petitioner has made to this Court.

As to Question III, as it was shown with reference to Questions I and II, the Petitioner's statement of the case shows how the federal question was raised in the trial court and the state appellate court at Pages 16 and 17.

As to Question IV:

The Injunction placed upon Robert Spickler restricting his free access to the courts of Maine, in anticipation that he may bring a baseless lawsuit against the bank and/or its agents where there is no evidence to support the fact that he may do so, is clearly a violation of his 14th Amendment guarantee of equal treatment under the law with all others, whether they be represented by counsel or not.

The fact that this federal issue was raised at each opportune time, at least by clear implication, are stated on Pages, 17, 18, 19, 20, 21 and 22.[3]

As to Question V:

The circumstances showing that Petitioner raised the question of unequal treatment by the trial court, and was clearly treated unequally while legitimately seeking relief for his claims in the

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[3]This issue was raised during the trial but not heard until several months after the trial, at which time the issue of unequal treatment was argued and repeated on appeal to the Maine Supreme Judicial Court.

state courts, clearly shows by implication, or otherwise, that the federal question V was properly raised.[4]

A. REPLY TO RESPONDENT'S ARGUMENT IN OPPOSITION TO PETITIONER'S QUESTION I:

Were defendant's costs in defending the Lot 26 claim levied against petitioner without due process of law?

Respondents, again, misrepresent the record in the Maine courts by making the irresponsible statement that the claim was "first raised" in a Motion for Reconsideration for amendment of the Decision of the Maine Supreme Judicial Court.

This issue was raised twice before in the Briefs on Appeal to the state court. It was raised in the original Brief at Page 67 under the heading RELIEF REQUESTED. It was raised again in the Reply Brief on Appeal at Page 75 at Paragraph 2.a.

This Court should now begin to see what the Petitioner meant in his preliminary comment in this reply brief concerning the lack of veracity of the Bank's counsel.

As far as the raising of the issue in the lower court, it was adequately presented many times, as the record shows, to the trial judge, at the very least by the clear implication of the many attempts he made to be joined as a party in his wife's claim

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[4] Unequal treatment of a party by any state court is an obvious and plain error in violation of the guarantees of the Fourteenth Amendment to the United States Constitution and, as such, must be recognized, sua sponte, by any state court.

on Lot #26. For example:

9-9-91 Spickler's Motion for recusal of Judge Brennan. [State APPENDIX Vol.III Pg. 477 et seq.]

3-12-89 Spickler's Motion to Amend Complaint to include Rights Assigned to him by R. D. Realty Corporation. [State APP. Vol.I - Pgs. 106, 116]

2-28-91 Spickler's Motion to join R. D. Realty Corporation as a necessary party. [State APP. Vol.I - Pg. 170]

3-25-91 Robert Spickler's Response to Defendants' Claim that He is Practising Unauthorized Law. [State APP. Vol.I - Pg. 170]

There are several more docket entries which repeatedly portray the multiple efforts made by Robert Spickler to join his wife, Olive, in the Lot #26 claim, all cumulative evidence of this continuing effort.

The record in both levels of the lower court show that Petitioner satisfied the requirements of Webb by a clear implication that the federal question of the taking of property without due process of law was adequately presented in the state system.

Perhaps, the Respondents feel that Spickler should have included, in his various attempts to join his wife, the assertion that if the court bars him from joinder it would be a violation of his 14th Amendment rights if the court then proceeded to levy Defendant's costs against him should his wife fail on her claim.

As ludicrous as it is, Repondents would not

hesitate to argue that Spickler should have anticipated the levy and argued against the possibility of the levy.

In any event, irrespective of all of the above, the taking of one's property without due process of law is so clearly forbidden by the 14th Amendment, it is so fundamental, so plain, and so apparently harmful to the petitioner that any reviewing court should condemn it, sua sponte, even if the petitioner were negligent and didn't raise it himself.

B. REPLY TO RESPONDENTS' ARGUMENT IN OPPOSITION TO PETITIONER'S QUESTION II:

THE TRIAL COURT'S FAILURE TO ALLOW THE COMPLAINT TO BE AMENDED TO INCLUDE THE RICO CLAIM.

The Respondents appear to argue that the Maine Supreme Judicial Court and the trial court did not allow the RICO claim only because it came on the sixth day of the trial.[5]

The RICO claim is a federal right, the denial of which is properly before this Court because it should have been permitted to go to trial at the state level.

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[5]This is another blatant misrepresentation of the record. Nowhere did either Maine court state in their Decisions to block the RICO claim that they did so on the grounds that it came too late. Note that the Maine Supreme Court doesn't even mention the RICO claim at all in its decision, but indirectly may be referring to it by saying, "The remaining issues are without merit and require no discussion." [PETITION A-9]

Under the circumstances, this Court, if it does not grant "cert", should summarily order that the RICO claim's dismissal at the state level is without prejudice.

At Footnote 1 on their Page 6, the Respondents, who have avoided uttering a single word about the issue of Mr. Lucas' perjurious testimony and doctored documents in the state court, do so, now, for the first time. Perhaps they feel secure that this honorable Supreme Court will never see the COMPELLING EVIDENCE, because history shows that the granting of "cert" to anybody, especially pro se petitioners where it is unheard of. They will gamble that they will never be questioned by this court.

This RICO claim against this bank should not die on the shelves of the law libraries. Many banks, at least those in Maine, will be encouraged to mistreat the public as was the Petitioner in this case.

C. REPLY TO RESPONDENTS' ARGUMENT IN OPPOSITION TO PETITIONER'S QUESTION III:

WERE THE DUE PROCESS RIGHTS OF R. D. REALTY CORPORATION DENIED?

A review of the Petition and the voluminous record of the proceedings in the Maine Court show that for years the claim of R. D. Realty was pressed by Petitioner who was legally assigned those rights, and R. D. Realty, who was the principal player in the whole dispute never had its just claims submitted to a court of law.

If the double talk smoke screen put up by the respondents is all that is required to extinguish a citizen's right to not lose his property except through due process of law, the Constitution needs some changes, or, at least, a new interpretation.

D. REPLY TO RESPONDENTS' ARGUMENT IN OPPOSITION TO PETITIONER'S QUESTION IV:

> WHERE THERE WAS NO EVIDAENCE THAT SPICKLER EVER FILED A BASELESS LAWSUIT, WAS IT A DENIAL OF HIS DUE PROCESS RIGHTS TO EQUAL TREATMENT UNDER THE LAW WHEN HE WAS BARRED FROM FUTURE FREE USE OF THE COURTS?

The key phrase in this question is the phrase "baseless lawsuits".

The injunction issued by the trial court and confirmed by the Maine Supreme Judicial Court says:

> "The injunction sets up a screening process which will protect the defendants and their agents from having to defend against baseless claims."
>
> [Emphasis added]

Before the trial began, Respondents' counsel, Mr. Robitzek (he who is arguing against this petition) simply filed a list of twenty-six miscellaneous lawsuits brought both by, and against Spickler and/or his corporations; most of which were brought or defended by attorneys who represented Spickler. The trial court took judicial notice of that list.[6]

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[6]This Court is asked to take judicial notice that the case that Respondents' counsel, Mr. Robitzek, purposely omitted from the 26 cases he presented to the trial court is: Robert D. Spickler v. Joseph E. Brennan et als, Maine Superior Court of Cumberland County, Docket #74-452. Petitioner will address the particulars of this omitted case later in this Brief.

Respondents' counsel then argued that the list of lawsuits showed that the Petitioner had a habit of bringing baseless lawsuits and he feared that Petitioner would bring unending, baseless lawsuits against him and his clients.

From that point forward at every opportunity, even in this petition, Spickler has challenged Mr. Robitzek to identify one baseless lawsuit that he has ever brought and Robitzek has failed to identify any, even up until today.

An interesting and meaningful thing has happened since this petition was filed.

On May 17th, 1993, the case of Spickler v. Greenberg, Cumberland County Docket #85-687, went to trial. Greenberg is one of the "baseless" lawsuits cited on Mr. Robitzek's list presented to Judge Brennan for judicial notice.

On May 20th, the jury in Greenberg reached a unanimous verdict for Spickler. [Attached hereto at R.B.A. - Pg.1]

Even so, Petitioner bets that Mr. Robitzek will not remove Greenberg from the list notwithstanding the outcome of the trial if Mr. Robitzek has reason to use that list in the future.

In the footnote #2 on Page 9 of Respondents' Brief, they give as "an example" of Spickler's "baseless" arguments, the statement that Spickler made that even in this action he was successful in obtaining a jury verdict in his favor. Spickler's statement is absolutely correct in that the jury in

this very case unanimously agreed that Key Bank unlawfully took Spickler's escrow funds.

However, if Respondents are arguing that the "record belies" that Spickler did well over all in the lawsuit, Spickler agrees fully. Over all, Spickler did poorly in this lawsuit, and the proximate cause for his poor showing is at the root of this petition.

D(1) WHY IS IT MATERIAL TO THIS PETITION THAT THIS COURT TAKE JUDICIAL NOTICE OF THE CASE, ROBERT D. SPICKLER V. JOSEPH E. BRENNAN?

Background of this Question D(1)

In 1970, Robert Spickler and John Carzis of Cohasset, Massachusetts became joint venturers with the sole objective of developing some three hundred acres of residential property along the waterfront and marshes of Scarborough, Maine. Spickler and Carzis held an option to purchase the Scarborough real estate. The partners agreed that Carzis would provide all working capital and Spickler would oversee, on a full time basis, all efforts leading to a successful completion of a 1,000 unit condominium community and its subsequent marketing program.

Spickler's contribution was to obtain licenses and other approvals from all authorities, federal, state and municipal. This became a two year project. The plan was confronted by environmental issues including approval to dredge new canals through virgin marshlands to facilitate a 1,000-boat

private marina for the residents.

After Spickler's sole efforts resulted in all of the aforesaid approvals except the final approval of the Planning Board of the Town of Scarborough, which was imminent, Carzis made the inappropriate demand that Spickler contribute to the working capital on an equal basis with him. Spickler refused to contribiute in that it was not part of the agreement and Carzis who controlled the finances caused the option to purchase the Scarborough real estate to expire.

Spickler, who had logged thousands of hours on the project, demanded reimbursment from Carzis and Carzis threatened Spickler with a lawsuit to collect money he invested in that venture.

During heated discussions, Spickler told Carzis that he could wait for the Courts to settle their dispute because he could go on with his other development which Carzis knew existed somewhere along the thousands of miles of the Maine Coast but not specifically where it was.

Carzis retorted that he would attach that real estate immediately and tie up Spickler so that he would be forced to give in to Carzis' demands.[7]

At that time, in the Summer of 1972, Maine law permitted lawyers to start lawsuits and then, without

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[7] Spickler found out later that Carzis had caused the jointly held original option to expire but had, at the same time bought the Scarborough property by using his nephew's name and concealing that Carzis was the true buyer.

notice or Court approval, to attach people's property, including bank accounts and real estate which could force even the defendant who was in the right to settle the case.

In 1972, Joseph E. Brennan was the County Attorney for Cumberland County in which Spickler resided. On or about July 1, 1972, there appeared an article in the Portland Press Herald which reported that the County Attorney had advised all sheriffs to cease making pre-judgment attachments as had been the custom, because such attachments might be constitutionally defective according to a recent ruling by the U.S. Supreme Court.

Spickler, who was in the process of shifting his efforts from the venture in Scarborough to the Chambers Point licensed subdivision in Roque Bluffs, Maine, and who had, in the previous few days been threatened by Carzis who said he would attach his real estate, went to see County Attorney Brennan at his offices in the County Court House to inquire about his recent advisory to the county sheriffs and the effect it would have on Carzis' threats.

Spickler spent time with Mr. Brennan to tell him in detail all about the failed joint venture with Mr. Carzis. Spickler identified the location of the Roque Bluffs property and even told Mr. Brennan that he had reason to suspect that Mr. Carzis was seeking to buy the Scarborough development for himself. Spickler told Mr. Brennan that because Carzis brought an abrupt halt to the

Scarborough project and squeezed him out, Spickler was turning to his old approved subdivision in Roque Bluffs which, at the time, was his only way of earning a living.

After listening to Spickler, Brennan offered no comment except to say he should hire a lawyer.

Within ten days after the meeting with County Attorney Brennan, Spickler was surprised to receive a summons and complaint, together with a writ of attachment on the Roque Bluffs subdivision, filed on behelf of Mr. Carzis by the same Mr. Joseph E. Brennan to whom Spickler had spoken in his capacity as County Attorney.

Brennan proceeded, in spite of the efforts of Spickler's attorney to stop it, to tie up all of the Roque Bluffs subdivision for fourteen months until a court order forced him to release the writ. Spickler lost thousands of dollars in sales as a result.

Over the next two years Spickler sought to hire an attorney who would represent him in a suit against Mr. Brennan on the grounds of misfeasance as county attorney. After being turned down by over a dozen lawyers, Spickler brought the suit pro se with the help from the President of the Maine Bar Association, Mr. Charles Smith, who wrote the pro se complaint for Spickler and told him how to file it.

Spickler had never acted pro se before, nor had he ever thought about it until the Brennan matter.

Over the years, Mr. Brennan climbed the political ladder until, in 1978, he became Governor of Maine and continued to be Maine's Governor until 1986 when, by law he was not allowed to run, successively, again.[8]

Spickler has continued to press the Brennan case, even up until now. That case was initially thrown out by the Superior Court, appealed to the Supreme Judicial Court which vacated the summary judgment. It has gone through nineteen years of Superior Court proceedings and has been recently thrown out again by the trial court and is, <u>again</u> on appeal to the Supreme Judicial Court. This case is well known throughout the legal community of Maine, including all of the judiciary.

SUBSIDIARY QUESTION

IS THERE, AT LEAST, THE APPEARANCE OF A LIKELIHOOD THAT ROBERT D. SPICKLER MAY BE TREATED WITH BIAS BY THE MAINE COURTS?

In the years from 1974 through 1985, although Spickler had some trouble with unfair treatment by Superior Court judges, it was minimal, and when substantial error was made, Spickler <u>always successfully</u> appealed it to the Maine Supreme Judicial Court.[9]

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[8]It is judicially noticeable that in the past month, Mr. Brennan has announced publicly he is a candidate for governor in the 1994 race.

[9]In most of the 1970s, the Supreme Court was headed by Chief Justice Dufresne who was followed by Chief Justice McKusick who recently retired.

Under the Supreme Judicial Court as headed by Chief Justice Dufresne or Chief Justice McKusick, this case would not have received the short shrift that it did. Petitioner is strongly convinced that Chief Justice McKusick would not have condoned the outlandish treatment that Spickler received in this Key Bank case and this Court would not have to intervene.

These are material, substantive facts: All judges in Maine must be re-appointed to their positions on the bench every seven years.

Most of the judges now on the bench in Maine, whether they be on the S.J.C. or the lower courts, have been appointed or re-appointed by ex-Governor Joseph E. Brennan.

Petitioner does not ask, nor does he expect this Court to grant "cert" solely on the basis that the judges involved could be biased against Spickler for his nineteen year attack on their benefactor. He does, however, in view of the probable bias, ask the Court to take a closer look at the petition than it normally would with a pro se petitioner.

E. THE REPLY RELATING TO QUESTION V: WAS THE PETITIONER'S GUARANTEE OF PROTECTION BY THE FOURTEENTH AMENDMENT DENIED UNDER COLOR OF STATE LAW?

In their defense of this argument, the Respondents make the following contention.

1. The claim was not raised in the State Court.
2. It is unsupported by the record.
3. The trial court bent over backwards to "help" the Spicklers.

4. Petitioner's statement of fact in support of this issue is vague, inaccurate and misleading.

5. The trial court "was well within its discretion" in ignoring the issue of Spickler being physically shoved by the bank's attorney.

Petitioner replies to each of these contentions, as follows:

1. The basis for this claim was made to the trial court when

(a) Spickler virtually begged to present to the jury his rights in Lot #26 and was refused every time.

(b) After he was barred from having anything to do with Lot #26 and his wife, who was unqualified to present the claim lost it, Robert Spickler was ordered to pay Defendant's costs.

(c) Petitioner has the bank dead to rights on a violation of the RICO Act. He presented the compelling law clearly to the trial court and again, on appeal. The trial court would not permit the claim to be filed and offered no reason or law in its decision to block Spickler's claim.

The appeals court also offered no law or reason to back up the trial court and conveniently didn't even mention one word about the assigned error.

(d) The claims on Lot #26 of R. D. Realty, the principal, most important person in the lawsuit, were blatantly blocked for years as Spickler doggedly tried to get relief for it.

(e) Finally, and perhaps the greatest travesty of justice, - the trial court placed an injunction on

the Petitioner preventing him from unobstructed use of the legal process in common with all citizens of Maine, including all lawyers. With Spickler's record, it could be convincingly argued that the punishment was meted out to Spickler because he learned too well how to protect his interests against his adversaries, and, with that record, he has become an adversary of the lawyer-judge oligarchy in Maine.

What other theory makes sense?

Did Spickler raise all of these points in the trial court and the appeals court? He did, many times, on the record, loudly and clearly.

Did he remind the trial court and the appeals court, while they were abusing him, that they were doing it in violation of 42 U.S.C. Sec. 1983? Of course he didn't, and he wasn't required to do it, either. The acts themselves are so obviously covered by the Code that a high school civics student would recognize the infringement.

2. All of the above is supported by the record.

3. If the conduct of the trial court shows that it bent over backwards to "help" the Spicklers, Petitioner asks to be shown how and when it happened.[10]

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[10]This is another of those many times when Respondents make a purported statement of material fact and do not, and cannot, show any support for it in the record.

4. Petitioner's statements of facts on this issue are not vague nor inaccurate and misleading. If they are, why doesn't Respondents' counsel show where, when and how they are as they claim? They don't, because they cannot do it.

5. Petitioner does not disagree that the trial court had discretionary powers to decide whether it was wrong or right for Mr. Robitzek to shove Spickler around. However, under the circumstances, it was an abuse of discretion, reflecting the policy of the trial court not to treat Spickler equally during court proceedings. It bears repeating the question: - What would have happened if Spickler were one-half the age of Mr. Robitzek and he shoved Robitzek around?

If that had happened, Spickler would have been found to be in criminal contempt and his entire case against the bank would have been dismissed. This is the unequal treatment he would have received if the tables were turned.

The state court would have been consistently against him, no matter on which side Spickler was to stand.

RESPONDENTS' ARGUMENT II.

THE RESPONDENTS CONTINUE THEIR STRATEGY OF SAYING THINGS THAT ARE ABSOLUTELY WITHOUT FOUNDATION.

Respondents say, again without any basis in law or fact, that the Petitioner's claims are insubstantial and frivolous.

Petitioner, in all of his briefing thus far, does not make a statement of fact without immediately citing the support for it. Have the Respondents made a single factual statement that would ordinarily be material to this Petition for which they have shown where it happened in the record? If there is one, Petitioner has not been able to find it.

Petitioner's claims are substantial and sound, and the Respondents know it.

RESPONDENTS' ARGUMENT III.

THERE ARE VERY IMPORTANT REASONS FOR A WRIT OF CERTIORARI.

First, here is a classic case where a state court has apparently gone beserk in its absolute refusal to recognize the Fourteenth Amendment guarantees, as well as the right of an individual to seek relief for harm done to him in violation of a specific federal statute.

Second, This awesome conglomerate of billion dollar affiliates which Defendant Key Bank is, has violated federal law. Key Bank has clear and obvious contempt of that law (the RICO Act) shown when it permitted its employee, Mr. Richard Lucas, to perjure himself before the jury, and placing into the record false documents to cover up for his employer's violation of the law.

Thousands of banks across the fifty states should be reminded that the hand of justice will not

tolerate such conduct, no matter how many high powered law firms represent the offenders.

Third, this Honorable Supreme Court should go on the record that a pro se party will, if he has ground, have his claim reviewed, no matter how many high-powered attorneys oppose him, and that those high-powered attorneys will not prevail only by the use of rhetoric, innuendo and pretended facts, or by citing inapplicable law, hoping to avoid a final review.

RESPONDENTS' ARGUMENT IV.

THIS PETITION FOR REVIEW IS BASED EXCLUSIVELY ON FEDERAL GROUNDS.

NO STATE LAW WAS EVER RAISED BY EITHER THE RESPONDENTS OR THE JUDGES CONCERNING THE ISSUES PRESENTED IN THIS PETITION.

Respondents, again, try to create confusion by arguing that the issues presented are exclusively concerned with state law which, of course is wrong.

PETITIONER MUST NOW REPLY TO THE INCLUSION IN RESPONDENTS' APPENDIX (at 6a), THE DECISION IN ROBERT D. SPICKLER V. ROGER P. DUBE ET AL., 87-1963 CA 1st.Circ.) June 22, 1988 [Marked: Not for Publication].

Facts:

1. This was an injunction issued ex parte - Spickler was not present.
2. In that case, prior to the sitting of Judge Mazzone, U.S. District Court Judge Gene Carter

found that there was the likelihood that Spickler would prevail in his claim against the defendants.

3. Judge Mazzone subsequently refused to issue an injunction to the state court against R. D. Realty's concurrent case against Dube and Levenson, stating in his Decision:

"The merits of the Spickler claim were not reached in the District Court."

4. Spickler also sought a writ of certiorari as he does here, and that petition was denied. If it had not, perhaps this petition would not have been necessary.

RESPONDENTS CALL SPICKLER A PROLIFIC PRO SE LITIGATOR. (Page 8 of their Brief)

By the appellation "prolific", which means fruitful, the Respondents have finally described the Petitioner with accuracy.

Petitioner agrees his pro se efforts have been fruitful - but only when the courts permit him to see his claims through to a jury. He asks that the United States Supreme Court, in view of his history of "fruitful", not "baseless" lawsuits, advise the Maine Supreme Court to reconsider its treatment of him in this case and vacate the injunction.

CONCLUSION

This suit was filed in the Maine Superior Court in March 1985. From 1985 until 1990 when the case was in a posture for trial, the Bank, which was

being represented by its own legal staff, employed the Simmons/Robitzek law firm to take this case through the trial.

The Simmons firm is notorious for its representation of defendants in criminal cases.

It is obvious that the bank knew that it had seriously and illegally harmed the plaintiffs and knew that they needed Simmons and company to get them out of the mess in which they had put themselves.

Simmons and company, being the experienced lawyers that they are, quickly recognized that the Spickler claims were legitimate and hard to defend head on. Therefore, they devised a strategy of disruption, resorting to a classic "rape defense", and began to attack the character of Spickler, in an effort to convince the judges that Spickler brought only baseless lawsuits, indiscriminately.

They knew that the judges, most of whom were appointed by Governor Joseph Brennan, might have a bias, latent or otherwise, against Spickler for "Picking on the Governor" and they planned to take advantage of it.

They were successful with this strategy because, unless this Honorable Court acts, the record will clearly indicate <u>forever</u> that Spickler was a guy who lived in Maine and apparently <u>always</u> sued people on frivolous grounds.

PETITIONER DOES NOT DESERVE THIS REPUTATION.

This Court is asked to exemplify by granting the writ, that it is possible for a pro se petitioner to get a review from the United States Supreme Court of a state court's decision in a civil matter.

This may permit Petitioner to present his claims to a jury so that those claims will see the light of day as they should have been permitted by the trial judge almost two years ago.

Signed at Phippsburg, Maine this 23rd day of June 1993.

Robert D. Spickler,
Petitioner pro se

HCR 31 - Box 109
Phippsburg, Maine 04562

Tel. 207/389-2464

NO.92-1830

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1993

ROBERT D. SPICKLER,
Petitioner

v.

KEY BANK OF SOUTHERN MAINE, and
RICHARD LUCAS,
Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT
OF THE STATE OF MAINE

REPLY BRIEF APPENDIX

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
Civil Action
Docket No. CV-85-687

ROBERT D. SPICKLER
Plaintiff
v.
LEO GREENBERG and
THE HARBOR SHOP, INC.

VERDICT FORM

Did the defendant, Leo Greenberg, commit perjury when he testified under oath at the trial in 1984, that at the time he signed the purchase and sale agreement on March 7, 1979, Robert Spickler assured him that he would receive a net of $200,000.00 for the sale of his business and that the Flynns would be responsible for paying Mr. Spickler's commission?

__X__ YES _____ NO

DATED: May 20, 1993

/s/ Christine A. Joyce
Jury Foreperson

Number of Jurors concurring in verdict 8
Number of Jurors not concurring in verdict 0